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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1943

No. 20

STATE OF CALIFORNIA AND BOARD OF STATE HARBOR COMMISSIONERS FOR SAN FRANCISCO HARBOR, APPELLANTS,

vs.

THE UNITED STATES OF AMERICA, UNITED STATES MARITIME COMMISSION, ENCINAL TERMINALS, ET AL.

No. 22

CITY OF OAKLAND, A MUNICIPAL CORPORATION, ACTING BY AND THROUGH ITS BOARD OF PORT COMMISSIONERS, APPELLANTS,

vs.

THE UNITED STATES OF AMERICA, UNITED STATES MARITIME COMMISSION, ENCINAL TERMINALS, ET AL.

APPEALS FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF CALIFORNIA

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IN THE SOUTHERN DIVISION OF THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA

No. 22000-R

STATE OF CALIFORNIA and BOARD OF STATE HARBOR COMMISSIONERS FOR SAN FRANCISCO HARBOR, Petitioners,

vs.

UNITED STATES OF AMERICA and UNITED STATES MARITIME COMMISSION, Defendants

PETITION AND BILL FOR INJUNCTION—Filed Oct. 21, 1941

Now comes State of California and Board of State Harbor Commissioners for San Francisco Harbor, the above named petitioners, who seek in this proceeding to enjoin, set aside, annul and suspend, so far as it relates to these petitioners, a certain affirmative order of the defendant United States Maritime Commission made and entered on the 11th day of September, 1941, in a proceeding before said United States Maritime Commission and designated "In the Matter of Services, Rates, Charges, Tolls, Rentals, Rules, Regulations, Classifications, Agreements, Acts, Practices, and Operations of the San Francisco Bay Area Terminals Named Herein" and numbered 555 on the Docket of said Commission, and for a cause of action the petitioners respectfully allege:

[fol. 2]

I

The State of California, one of the above named petitioners herein, is one of the States of the United States of America, and the Board of State Harbor Commissioners for San Francisco Harbor, one of the above named petitioners herein, hereinafter referred to as the Board, is and at all times herein mentioned was a duly constituted agency of the state government of said State of California, and this suit is brought on behalf of both of said petitioners pursuant to the written request of the Board. Earl Warren is the duly elected, qualified and acting Attorney General of the State of California. The principal operating office of

petitioner State of California, so far as the matters and things investigated in the above mentioned proceeding before the Commission are concerned, is at San Francisco, California, and the principal place of business and office and operating office of petitioner the Board is at San Francisco, California.

II

The United States of America is made defendant in this suit pursuant to Section 31 of the Shipping Act, 1918, as amended (39 Stat. 738, c. 341, Sec. 31; 46 U. S. Code, Sec. 830), 28 U. S. Code, Sec. 41, subd. (28), and Title 28, U. S. Code, Secs. 43-48, inclusive.

The defendant United States Maritime Commission, hereinafter referred to as the Commission, is an administrative body created by the Shipping Act of 1916 and the acts amendatory and supplementary thereto.

The affirmative order of the United States Maritime Commission hereafter mentioned was made in a proceeding instituted by the Commission, the matter involved in such proceeding arising within the Northern District of California, Southern Division.

III

This petition invokes the jurisdiction of this honorable [fol. 3] Court under, and such jurisdiction is based upon, the provisions of 28 U. S. Code, Sec. 41, subd. (28), and of the Shipping Act, 1916, as amended (46 U. S. Code, Sec. 830), which provide for actions to enjoin, set aside, annul or suspend, in whole or in part, the orders of the defendant Commission; and this petition further alleges that the jurisdiction of this Court depends upon the fact that this action arises under the Constitution and laws of the United States of America. The petitioners allege that the proceeding here instituted is brought to suspend and set aside an order of the Commission, and the proceeding is brought in the judicial district wherein are the residences of the parties concerning whose acts the investigation and hearing and said order of the Commission were made, and the district where the matters complained of in the proceeding before the Commission arise is within the jurisdiction of this honorable Court.

IV

On the 7th day of November, 1939, defendant Commission, at a session held at its office in Washington, D. C.,

upon its own motion made its order in the proceeding hereinabove mentioned; that said order initiated an investigation to determine whether the services, rates, charges, tolls, rentals, rules, regulations, classifications, agreements, acts, practices and operations of all or any of the terminals referred to therein are in violation of Sections 15, 16, 17 and 20 of the Shipping Act of 1916, as amended. Said order named certain terminals as respondents in said proceeding. Subsequently the Commission ordered that the Board of State Harbor Commissioners, Port of San Francisco (whose true name is Board of State Harbor Commissioners for San Francisco Harbor", and the State of California be made respondents in said proceeding.

Hearings in said proceeding were held in San Francisco [fol. 4] on February 13, 14, 15, 16, 19, 20, 21, and, after continuance, on October 7, 8 and 9, 1940, on which last date the hearing was concluded and the matters before the Commission submitted on briefs to be subsequently filed. Thereafter the attorney for the Commission served upon all the respondents in said proceeding his request for findings of fact and conclusions, to which exceptions and proposed amendments were made and filed by each of these petitioners, including an exception to the proposed finding that the Board was and is included within "other persons subject to this act", as defined in Section 1 of the Shipping Act of 1916, as amended, and also to said counsel's proposed findings of fact and conclusions Nos. 5, 6 and 8.

At the beginning of the hearing petitioners herein, both appearing specially for that purpose and that purpose alone, made a motion to dismiss the proceedings as against each of them. The motion was denied by the Chief Regulations Examiner, whereupon these petitioners, reserving said objection to the jurisdiction of the Commission and not in any manner waiving the same, appeared generally in the proceeding.

At the conclusion of the hearing said respondents again moved to dismiss the proceeding as to each of them on the ground that the Commission had no jurisdiction of them or either of them in said proceeding, and said motion was also denied. Said motion was in words as follows, towit:

"1. That the United States Maritime Commission has no jurisdiction of either of said respondents or of the

subject matter of said proceedings so far as it relates to said respondents or either of them.

"2. That the United States Maritime Commission is without authority to investigate any of the practices or acts of the State of California or the Board of State Harbor Commissioners for San Francisco Harbor.

"3. That there is no constitutional authority for Congress to extend or exercise its regulatory power in any [fol. 5] manner over either of said respondents.

"4. That the Shipping Act of 1916, as amended, is not intended to apply and does not apply to or include these respondents, the State of California or the Board of State Harbor Commissioners for San Francisco Harbor, and that the United States Maritime Commission is not authorized or empowered by statute or otherwise to investigate or regulate either of said respondents with reference or in relation to any of the matters or things referred to in the Shipping Act of 1916, as amended, and particularly as referred to in sections 1, 15, 16, 17 and 20 of said act or otherwise."

Briefs were subsequently filed. The honorable G. O. Basham, Chief Regulations Examiner, subsequently made and filed in said proceeding his proposed report and recommended findings, which were served upon all respondents in said proceeding, including these petitioners. These findings included a finding numbered 1 that respondent in said proceeding, the Board, is included within "other persons subject to this act as defined in Section 1 of the Shipping Act of 1916, as amended". This recommended finding and also findings Nos. 6, 8 and 9, relating respectively to failure of these respondents to give thirty days' notice of tariff changes, to the prescribing of minimum demurrage and wharf storage charges, and requiring all of the respondents in said proceeding to file tariffs with the Commission, were duly excepted to by both of these petitioners.

The matter, being submitted on briefs, was orally argued before the Commission on July 9, 1941. Subsequently the Commission made and filed its order, a copy of which is attached hereto and marked Exhibit "A" and made a part hereof as fully as if herein set out verbatim.

V

At the hearing in the above mentioned proceeding before the Commission there was evidence introduced, without any evidence in contradiction thereof, as to the following facts: That petitioner the Board is a public body whose members [fol. 6] are appointed by the Governor of the State of California and confirmed by the State Senate, said Board having been created under the statutes of the State of California in 1863; that the Board controls the activities of petitioner State of California on the San Francisco waterfront, providing facilities for handling of freight and passengers thereon, operating the State Belt Railroad and some forty-five wharves and piers; that all these wharves and piers have been built by petitioner the State of California out of San Francisco Harbor improvement funds or Harbor Bond funds supplied from bonds voted by the People of the State and for which the State credit is pledged; that all of those piers are built over submerged tidal waters of San Francisco bay or on reclaimed land, and all are located on state property owned by the State of California; that previous to the filling in of these tidelands they were covered by tidal waters; that these lands have been reclaimed and filled in by the State of California, which State owned them at the time of reclamation and has owned them since the admission of the State into the Union; that in administering these wharves and piers, constituting the Port of San Francisco, petitioner State of California, through the Board, is limited in its charges by Section 3084, Harbors and Navigation Code, hereinafter referred to as the H. and N. Code; that the Board has and exercises powers vested in it by H. and N. Code Sections 3005, 3204, 3226, 3130-3138, 1909, 3052, 3150, 1944, 1945 and 1908, 3105 and 3201, 1782, 1900, 1907, 1708, 1732, 1706, 1990, 3200 and 3201, relating respectively to building a seawall and dredge, providing harbor police and making quarantine regulations, extending streets and establishing thoroughfares, exercising power of eminent domain, locating and constructing public dry docks, locating docks for federal use, operating a belt line railroad, providing a location for airports, making rules and regulations to control the same, contracting for and using fireboats, regulating obstructions to com- [fol. 7] merce and navigation in San Francisco bay, mapping water front changes, making rules and regulations for

the commerce of the port, appointing officers and employees of the State, possessing and controlling the area of the Port of San Francisco owned by the State, depositing monthly the revenues of the Board in the State Treasury and using such funds for paying expenses of the Board, making contracts in the manner prescribed by law, and prosecuting persons failing to comply with rules and regulations of the Board in the placing of obstructions in the bay without its consent; that said wharves and piers on the San Francisco water front and said harbor are administered pursuant to and in the manner provided by Section 1706, H. and N. Code, requiring all moneys collected by the Board to be paid into the State Treasury to the credit of the San Francisco Harbor Improvement Fund, and that said fund shall be expended to pay the expenses of the Board and in the manner provided by Section 3080, providing that the Board shall regulate port charges and collect an amount therefrom sufficient to enable it to perform its legally required duties, and in the manner provided by Section 3084, providing that no more money shall be collected by the Board than is sufficient to enable it to perform its duties and exercise its powers provided for in said Code.

That all the evidence taken at said hearing upon the matters of the method of the Board's creation, its existence, activities, powers and duties justified and justifies the inference that it exercised and exercises, and as a matter of fact it did and does exercise, only purely governmental powers, and that petitioner State of California, in the construction, maintenance and administration of the Harbor of San Francisco, was at all times mentioned in said proceeding before the Commission engaged and is now engaged, by and through the petitioner Board, in the performance of purely governmental functions, and was not [fol. 8] and is not engaged in any kind of business whatsoever; that there was no evidence at said hearing to the contrary, and no evidence that either of petitioners was engaged in any business whatsoever or in performing any function other than a governmental function.

VI

That there was no evidence at said hearing that either of these petitioners was at any of the times mentioned or in-

quired into at said hearing or is now carrying on the business of furnishing wharfage, dock, warehouse or other terminal facilities in connection with a common carrier by water, or otherwise, or that either of said petitioners was at any of said times or now is carrying on any business whatsoever.

VII

That the Congress of the United States has and had no power to authorize the United States Maritime Commission to regulate either of the petitioners herein in the exercise of the powers vested in the Board as hereinabove alleged, or in making or adopting or enforcing regulations as to the amount of free time to be allowed for the assembling of cargo upon, or its removal from, the wharves and piers of petitioner State of California, or in the matter of giving notice of tariff changes, or of fixing and collecting wharf demurrage or storage charges on cargo left upon said wharves and piers beyond the free time allowed, or in regulating any of the practices or activities whatsoever of either of these petitioners in relation to the said wharves and piers of petitioner State of California on the San Francisco waterfront or in San Francisco Harbor.

VIII

That the Shipping Act of 1916, as amended, does not by its terms purport to apply and does not apply to petitioner State of California or petitioner Board of State Harbor Commissioners for San Francisco Harbor.

[fol. 9]

IX

That by reason of the law and the facts established at said hearing before the Commission, the Commission has and had no jurisdiction of either of the petitioners in said proceeding before it, or of any of the matters or things investigated in said proceeding so far as they related or relate to either of these petitioners, and said order made by the Commission in said proceeding on September 11, 1941, so far as it related or relates or was intended to relate to either of these petitioners or to any of their activities, was and is erroneous and void and of no effect, and beyond the power of the United States Maritime Commission.

X

That said order is erroneous and void for all of the following reasons:

(1) In that it did not grant the motion of these petitioners to dismiss said proceeding as to each of them;

(2) In that it found and determined that the United States Maritime Commission had and has jurisdiction of each of these petitioners in said proceeding;

(3) In that it found and determined that Congress has constitutional power to regulate petitioner State of California, a state of the United States of America, acting by and through petitioner, the Board of State Harbor Commissioners for San Francisco Harbor, an agency of said state, in the ownership and/or operation of a wharf;

(4) In that it did not find and determine that Congress has no power to regulate any owner and/or operator of a wharf or any wharfinger;

(5) In that it determined that Congress, in enacting the Shipping Act of 1916, as amended, intended to give and did give the United States Maritime Commission power to regulate petitioner State of California, a state of the United [fol. 10] States, in the ownership and/or operation of a wharf, by and through the Board of State Harbor Commissioners for San Francisco Harbor, an agency of said state;

(6) In that it determined that each of these petitioners is an "other person subject to this act" as that term is used in Section 1 of the Shipping Act of 1916, as amended;

And that said order is erroneous and void for all the additional reasons hereinafter specified.

XI

That finding numbered 7, page 27 of the Report and Order of the Commission in said proceeding purports to be based upon studies of the cost of furnishing wharf storage in the San Francisco Bay Terminals, yet the evidence at the hearing that no study of such costs was made on the piers and wharves of these petitioners is uncontradicted, and the finding and determination of the Commission and its said affirmative order prescribing certain minimum

rates of wharf demurrage is mainly based upon a study and investigation not made by the Commission, and which is more than four years old, and is valueless as a basis for prescribing rates purporting to be compensatory;

That the evidence at the hearing is uncontradicted that it is necessary to charge so-called "penalty" rates of wharf storage and demurrage on the wharves and piers of these petitioners in order to keep the "in transit" portions of said wharves and piers clear of goods and thus permit free flow of traffic;

That for these reasons and for the further reason that said order as to rates of wharf storage and demurrage is based entirely upon the assumption that such rates to be reasonable and not unduly prejudicial and preferential, particularly as to these petitioners, should be compensatory, and not at "penalty" rates is wholly unsupported by and contrary to the evidence taken at the hearing; and is un- [fol. 11] reasonable, discriminatory, and prejudicial to these petitioners; that said portion of said affirmative order was made without jurisdiction, was made wholly without warrant of law, and is erroneous and void as to these petitioners.

XII

That said affirmative order of the Commission is erroneous in that without jurisdiction to make any finding, determination or order in said proceeding as to either of these petitioners, the Commission made all of the findings, determinations, and orders, hereinabove mentioned in this petition without jurisdiction, and, further, purported to order these petitioners to file with the Commission and keep open to public inspection, *to file with the Commission and keep open to public inspection*, schedules showing all rates and charges for the furnishing of wharfage, dock, warehouse and other terminal facilities in connection with a common carrier by water.

XIII

That the said affirmative order is void and of no effect for the further reason that it violates Section 9 of Article I of the United States Constitution in that it is a regulation of commerce which gives preference to the ports of the

states of Washington and Oregon over the petitioners herein in two respects, namely, by prescribing higher wharf storage rates for these petitioners while permitting such other ports to maintain lower rates than those prescribed, and by prescribing a shorter free time period for these petitioners than is permitted to remain in effect in such other ports. That such other ports in the states of Washington and Oregon are in competition with these petitioners in connection with the transpacific and intercoastal trades.

XIV

That petitioners have heretofore on the 17th day of October, 1941, filed with the United States Maritime Commission their petition for reconsideration of its said affirmative [fol. 12] order of September 11, 1941, but petitioners have received from said Commission no notice of its action upon said petition; that a copy of said petition is attached hereto and marked Exhibit "B" and made a part hereof as fully as if herein set out verbatim.

XV

That said affirmative order of the said United States Maritime Commission is erroneous and void as to these petitioners in that it takes from petitioners their property for a public use without just compensation, and indirectly deprives the petitioners of their property without due or any process of law in violation of the Fifth Amendment to the Constitution of the United States, and in this behalf the petitioners allege that compliance with the said affirmative order of the Commission will compel petitioners to suffer irreparable loss, as herein alleged, during the continuance of the effectiveness of said order.

XVI

That said affirmative order of the Commission is predicated upon a misapplication of the law to the facts, and the said order is erroneous and void and beyond the power of the United States Maritime Commission and is in violation of the United States Statutes in such cases made and provided.

XVII

That said affirmative order of the Commission is based upon a mistake of law and the United States Maritime Com-

mission has erroneously construed its authority under the aforesaid Shipping Act of 1916, and the Acts amendatory and supplementary thereto, in that there is no warrant or authority in said Shipping Act authorizing the United States Maritime Commission to make such order as to these petitioners.

That by reason of the foregoing premises the affirmative order of the Commission dated September 11, 1941, is in ex- [fol. 13] cess of the authority conferred upon it by law and is therefore void as to these petifioners.

XVIII

The affirmative order of the Commission made on the 11th day of September, 1941, requires these petitioners to comply therewith on or before October 27, 1941, and thus compels petitioners to cease and desist on said day and thereafter to abstain from allowing greater periods of free time than the periods set forth in Table 1 of the report exclusive of Sundays and holidays, except as stated in said order, and requires these petitioners on or before said date to cease and desist from publishing, demanding or collecting wharf demurrage or wharf storage rates which shall be less than the minimum rates found reasonable in Finding 7 of said Commission's Report and findings, and said order further requires these petitioners and each of them to file with the Commission and keep open to public inspection schedules showing all rates and charges for the furnishing of wharfage, dock, warehouse, or other terminal facilities in connection with a common carrier by water.

Unless the enforcement, operation and execution of the said affirmative order of the United States Maritime Commission is restrained and suspended during the course of this proceeding, irreparable injury will ensue to each of these petitioners in that they and each of them will sustain serious financial loss from being compelled to move storage cargo from the wharf where it has been declared for storage to an off storage area or warehouse without being compensated therefor, and further in that failure by the petitioners to comply with the said order will subject petitioners and each of them to severe penalties as prescribed in the Shipping Act of 1916, as amended, pursuant to which each day constitutes a separate violation and is subject to a separate and an exceedingly heavy penalty;

[fol. 14] That by reason of the premises, herein set forth, the petitioners have and each of them has no plain, speedy or adequate remedy at law.

Wherefore petitioners pray:

(a) That process in due form issue out of and under the seal of the Honorable Court, directed to defendants as required by law and that due and proper service of such process and of this petition be forthwith made by filing a copy thereof in the office of the Department of Justice of the United States and another copy in the office of the United States Maritime Commission pursuant to the provisions of Section 209 Judicial Code (Title 28 U. S. Code, Sec. 45) and thereafter the defendants and each of them be required on or before a date to be specified in the notice of process issued by this Court to appear herein and to answer this petition, but not under oath, answer under oath being hereby expressly waived.

(b) That as soon as practicable this Court convene a special statutory Court of three (3) judges as required by Title 28, U. S. Code, Sec. 47, and that a preliminary injunction be entered herein restraining, enjoining and suspending, until the further order of this Court the effect and enforcement of said affirmative order of September 11, 1941, until the further order of this Court.

(c) That inasmuch as the matter is urgent by reason of the fact that said affirmative order of the United States Maritime Commission requires the petitioners to comply therewith on or before October 27, 1941, the petitioners pray that pending the hearing upon the application for a preliminary or interlocutory injunction, a temporary restraining order be issued by this Honorable Court restraining, enjoining, and suspending the operation of the aforesaid affirmative order until the said application for a preliminary or interlocutory injunction shall have been heard and de-
[fol. 15] termined.

(d) That after final hearing, this Court adjudge, order and decree that the said affirmative order of the United States Maritime Commission is, and has at all times been beyond the lawful authority of the said Commission and wholly unlawful and void, and that the said affirmative order be perpetually set aside, suspended, cancelled and

annulled and the enforcement thereof perpetually enjoined, in so far as it affects or relates to these petitioners.

(e) That your petitioners shall have such other and further relief in the premises as in equity and justice may appertain, and as may be deemed by this Honorable Court to be adequate and proper under the circumstances.

State of California, and Board of State Harbor Commissioners for San Francisco Harbor. By J. F. Marias, President of said Board, Petitioners.

Earl Warren, Attorney General of the State of California. Lucas E. Kilkenny, Deputy Attorney General, Attorneys for Petitioners.

[fol. 16] *Duly sworn to by J. F. Marias, jurat omitted in printing.*

[fol. 17] EXHIBIT "A"

No. 555

Practices, Etc. of San Francisco Bay Area Terminals

Submitted July 9, 1941. Decided September 11, 1941.

Respondents, including State and municipal terminals, are "other persons" as defined in Shipping Act, 1916, as amended.

Certain respondents are operating under agreements or working arrangements within the purview of section 15 of said act, without approval of the Commission.

Practice of Encinal Terminals of collecting service charges from steamship lines on freight discharged at other terminals unauthorized by its tariff and unreasonable in violation of section 17 of said act.

Encinal Terminals knowingly received information in violation of section 20 of said act.

Practice of State and municipal terminals of making tariff changes without adequate notice unreasonable. Changes

should not be made except upon 30 days' notice, unless good cause exists for shorter period.

Respondents' rules, regulations and practices regarding free time unduly prejudicial and preferential and unreasonable in violation of sections 16 and 17 respectively, of said act. Reasonable regulation prescribed.

Respondents' rates, rules, regulations, and practices relating to wharf demurrage and wharf storage unduly prejudicial and preferential and unreasonable in violation of sections 16 and 17 respectively, of said act. Reasonable regulation prescribed.

Respondents should file their tariffis with the Commission in order that regulations prescribed may be enforced.

Appropriate order entered.

David E. Scoll, Samuel D. Slade, T. G. Differding and *Carl F. Arnold* for the Commission.

Lucas E. Kilkenny, Earl Warren and *E. A. McMillan* for State of California and Board of State Harbor Commissioners for San Francisco Harbor.

W. Reginald Jones, Charles A. Beardsley and *M. D. McCarl* for Board of Port Commissioners of the City of Oakland.

J. R. Townsend, B. C. Allin and *C. O. Burgin* for Stockton Port District.

W. G. Stone for Port of Sacramento and Sacramento Chamber of Commerce.

Leslie M. Rudy for Port of Redwood City.

W. R. Gerini for State Terminal Company, Ltd.

[fol. 18] *W. F. Williamson* and *R. P. Norton* for Eldorado Terminal Company and Eldorado Oil Works.

Eugene D. Bennett, Hugh T. Fullerton, Joseph J. Geary, and *E. M. Nuckols, Jr.* for Encinal Terminals.

Chalmers G. Graham for Howard Terminal.

F. A. Somers for Grangers Terminal Company.

P. J. Shaw for South San Francisco Terminal Company.

Eugene A. Read and *Fred D. Parr* for Parr-Richmond Terminal Corporation.

C. S. Connolly for Albers Brothers Milling Company and Interstate Terminals, Ltd.

W. S. Bell for Islais Creek Grain Terminal Corporation.

J. H. Anderson and *F. W. Mielke* for The River Lines.

H. V. Nootbaar for West Coast Wharf and Storage Company.

Joseph J. Burns for Standard Coal Company.

C. A. Hodgman for Port of San Diego.

Edwin G. Wilcox for Oakland Chamber of Commerce.

Elmer Westlake for Western Sugar Company, Spreckels Sugar Refinery and California and Hawaiian Sugar Refining Corporation.

Reginald F. Walker for Western Sugar Refinery and Spreckels Sugar Company.

H. A. Lincoln for Fibreboard Products, Inc.

Walter A. Rohde for San Francisco Chamber of Commerce.

Warren D. Lamport, John L. Kelly, Elor J. Amar and *Charles A. Bland* for Board of Harbor Commissioners of Long Beach.

Clyde M. Leach for Board of Harbor Commissioners of the City of Los Angeles.

L. M. Fites for the Glidden Company.

J. K. Hiltner for United States Pipe and Foundry Company and Cast Iron Pressure Pipe Institute.

N. S. Laidlaw for Swayne and Hoyt, Ltd.

J. R. West for Northwest Marine Terminal Association.

L. A. Bailey and *Reginald L. Vaughan* for Warehousemen's Association of the Port of San Francisco.

E. M. Cole for American Cast Iron Pipe Company and Cast Iron Pressure Pipe Institute.

Report of the Commission.

By the Commission:

Exceptions were filed to the report proposed by the examiner and oral argument was had. Substantially all of the examiner's recommendations are adopted herein.

This investigation was instituted upon our own motion to determine whether certain acts and practices of respondents[1], which operate terminals in the San Francisco Bay area, are in violation of the Shipping Act, 1916, as [fol. 19] amended. Various shippers intervened, but offered no evidence. After hearing, briefs and replies thereto were filed.

The order of investigation alleges that some or all of respondents: (1) are carrying out agreements in violation of section 15; (2) are diverting cargo from its natural course and creating undue preferences or subjecting persons or traffic to undue prejudice by means of controlled tonnage and purchasing power in violation of section 16; (3) are receiving or soliciting confidential information from carriers which might be used to the detriment of shippers in violation of section 20; and (4) have failed to establish reasonable regulations and practices in connection with the receiving, storing, or delivery of property in violation of section 17.

The Board of State Harbor Commissioners for San Francisco Harbor, hereinafter called San Francisco, controls piers and wharves on the San Francisco waterfront which represent an investment of over $40,000,000. Approximately 40 piers are assigned to, and are operated by steamship lines. San Francisco retains all revenue from

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[1] Albers Brothers Milling Company; Board of Port Commissioners of the City of Oakland; Board of State Harbor Commissioners for San Francisco Harbor; Eldorado Oil Works; Eldorado Terminal; Encinal Terminals; Golden Gate Terminals; Grangers Terminal Company; Howard Terminal; Interstate Terminal, Ltd.; Islais Creek Grain Terminal Corporation; Parr-Richmond Terminal Corporation; Port of Redwood City; Port of Sacramento; Stockton Port District; Standard Coal Company of California; South San Francisco Terminal Company; State of California; State Terminal Company, Ltd.; The River Lines; West Coast Wharf and Storage Company.

dockage, tolls, rentals, storage and wharf demurrage. It is not permitted by State law to engage in warehousing or to operate under tariffs which create either a profit or loss. No taxes are paid. San Francisco's pier No. 45 and part of No. 56 are assigned to Golden Gate Terminals and State Terminal Company, respectively. They retain only revenues from handling, loading and accessorial services which they perform. The Board of Port Commissioners of the City of Oakland, hereinafter called Oakland, operates terminal facilities at Oakland. Its investment in property, derived largely from local and partly from Federal funds, is approximately $20,000,000. No taxes are paid and the City is authorized to meet operating deficits by taxation. The Stockton Port District operates terminal properties at Stockton, together with warehouse, belt railroad and other facilities, which represent a total investment of local, State, and Federal funds in excess of $9,000,000. No taxes are paid and interest charges and bond redemptions are met by tax levies upon the Port District.

Parr-Richmond Terminal Corporation operates terminal facilities at Richmond. A major portion of the property [fol. 20] is owned by the City and leased to the corporation. All of the facilities are exempt from city taxation. Howard Terminal and Encinal Terminals operate terminal facilities on the Oakland inner harbor. Encinal's facilities are leased from its parent company, Alaska Packers Association, which is controlled by California Packing Company, hereinafter called "Calpak." Operations of the other respondents are only incidentally involved in this proceeding.

The privately owned terminals, namely Parr-Richmond, Howard and Encinal and Golden Gate and State Terminals, file their tariffs with, and are regulated by the Railroad Commission of the State of California. The publicly owned terminals, which operate the major portion of the terminal facilities in the San Francisco Bay area, file no tariffs and are unregulated, except by their own governing bodies.

In 1935, the California Commission undertook a comprehensive study of the operations and revenues of private terminals in the Bay area. These studies are embodied in the Preliminary and Final Reports of Dr. Ford K. Edwards and Mr. T. G. Differding, which are of record in this proceeding. An analysis was made of all of the rates, rules and practices of the terminals from three aspects, (1) the

inadequacy of existing revenues, (2) uneconomical diversion of tonnage from one port to another, and (3) discrimination between various users of the terminal services. Certain of their recommendations, approved by the California Commission in *Decision No. 29171; Case No. 4090, Railroad Commission of the State of California* (1936), and supported by testimony of Mr. Differding in this proceeding have been recommended for adoption by counsel for the Maritime Commission. The order of the California Commission, prescribing an adjustment of the rates, rules and practices of the private terminals, was conditioned upon similar adjustments being made by the State and municipal terminals. All of the respondents herein have adopted substantially the recommendations of the California Commission covering toll, dockage and service charges,[2] but not those relating to free time, demurrage and stor- [fol. 21] age. The primary issues in this proceeding concern the latter services.

San Francisco and Oakland, though extending their assistance and cooperation in this investigation, oppose the jurisdiction of the Commission on the ground that they are not "other persons" within the definition[3] contained in the Shipping Act, 1916, as amended. The law on the question has been ably briefed by those for and against our assumption of jurisdiction in the premises. However, no sufficient reason is shown for a departure from *Wharfage Charges and Practices at Boston, Mass.*, 2 U. S. M. C. 245, wherein, after considering contentions similiar to those advanced by San Francisco and Oakland, we ruled that the Commonwealth of Massachusetts, in so far as it engages in the

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[2] Toll charges are assessed against cargo for the privilege of transportation over or through terminal, or being loaded or discharged at terminal. Dockage charge is assessed against vessel for docking at wharf. Service charge is assessed against vessel for arranging for berth, space for cargo, checking cargo to or from vessel, receiving or delivering cargo, preparing manifests and "over", "short", "damage" reports, etc.

[3] The term "other person subject to this act" means any person not included in the term "common carrier by water," carrying on the business of forwarding or furnishing wharfage, dock, warehouse, or other terminal facilities in connection with a common carrier by water (Section 1).

activities of an "other person," as defined in the Shipping Act, 1916, as amended, is subject to that act.

Issues

Aside from the jurisdictional question, the issues concern the lawfulness of: (1) certain agreements under section 15, (2) Encinal's practice of collecting charges from steamship lines on freight discharged at another terminal, (3) Encinal's practice of soliciting freight through reciprocal purchases, (4) Encinal's practice of receiving notices containing names of consignees desiring delivery of cargo elsewhere without their consent, (5) the practice of San Francisco, Oakland and Stockton, of failing to provide adequate notice of tariff change, (6) the free time rules of respondents, except San Francisco, (7) the wharf demurrage and wharf storage charges assessed by Oakland, Howard, Stockton, Encinal, Parr-Richmond, Golden Gate and State terminals, and (8) the leasing and rental arrangements of Stockton and Oakland.

Agreements

Oakland and McCormick Steamship Company operate under an agreement dated March 1, 1932 covering a preferential assignment to the latter of one-half of the shed area [fol. 22] at the former's Ninth Avenue terminal. The agreement provides that McCormick shall not compete with Oakland for terminal traffic and shall observe the same rates. Oakland also has an agreement with Howard, dated November 5, 1914, leasing certain facilities to the latter with the understanding that Oakland shall receive all revenue from tolls, wharfage and dockage. Rates to be observed are those fixed by Oakland. Stockton, under agreement dated July 23, 1936, extends preferential use of certain floor space to its lessee, Port of Stockton Grain Terminal, for the handling of grain and similar products. The latter company, though not a respondent herein, is a public wharfinger and files its rates with the California Commission. Stockton retains control of the space as well as the rates, rules and regulations to be observed. None of these agreements has been filed with the Commission.

Clearly, these are agreements as defined in Section 15, providing for "special rates, accommodations, or other

special privileges or advantages; controlling, regulating, preventing, or destroying competition; * * * or in any manner providing for an exclusive, preferential, or cooperative working arrangement." As such, they are subject to our approval and it is unlawful to carry them out before such approval.

Encinal's practices

Encinal is charged with unlawfully exacting service charges from McCormick and Williams, Dimond & Company, agents for Quaker Line for unperformed service. On freight billed to, but not delivered at, Encinal the carriers pay toll and service charges to Encinal as if the cargo had been delivered there. Carriers are said to be forced into this unusual practice by Encinal's use of the purchasing power and controlled tonnage of its parent companies.

McCormick tries to confine its East Bay operations to its terminal at Oakland, but admits that its terminal policies are influenced by a desire to obtain cargo controlled by Calpak. In 1935, McCormick discontinued coastwise calls at Encinal and thereby lost both coastwise and southbound Calpak traffic. Later, an agreement was made between Encinal, Calpak and McCormick whereby McCormick was [fol. 23] to resume the calls. In return it was to get southbound cargo controlled by Calpak and agreed, as to freight obtained through its own solicitation, not to oppose discharge thereof at Encinal. The cargo was delivered direct to McCormick's terminal whenever possible, with the permission of the consignees. For this "privilege" McCormick compensated Encinal through the above-described practice.

None of the other lines except Quaker indulged in this practice. Calpak is one of the Quaker's best customers. McCormick has no similar arrangement with any other terminal. Encinal states that under McCormick's tariff the latter was obligated to discharge at Encinal, and that by delivering to consignee at Oakland by Encinal's consent, McCormick saved the cost of draying or shifting to Encinal, and obtained carloading revenues on some of the shipments.

The collection of the charge, for which no service is performed, is not only in violation of Encinal's tariff, but is an unreasonable practice.

Encinal is charged, through improper solicitation, with diverting to its piers cargo originally consigned to compet-

ing piers. This is accomplished through a system of reciprocity between the consignee, Encinal, and a third party who is a buyer from the consignee and a seller to Encinal. For instance, a cargo of sulphur consigned to General Chemical Company for Howard delivery was diverted while in transit to Encinal (Standard Coal Company) through the intercession, at Encinal's request, of Tidewater Associated Oil Company. Associated sells large quantities of oil to Encinal and Calpak and is an important customer of General Chemical's. The consignee advised its New York principal that the change was made at Associated's request "for reciprocal reasons."

As stated in *Reciprocity in Purchasing and Routing*, 188 I. C. C. 417, 433-4, "the practice * * * succeeds only in making the handling of existing traffic more expensive." However, the evidence does not show that Encinal used its purchasing power or that of its affiliates in a coercive manner. We conclude therefore that the allegation has not been sustained.

[fol. 24] Encinal is alleged to have violated section 20[4] of the Shipping Act, 1916, by receiving information, without the consignee's consent, as to the billing of shipments consigned to another terminal. From July 1936, to June 1939, approximately 28 lists of consignees desiring Howard de-

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[4] That it shall be unlawful for any common carrier by water or other person subject to this Act, or any officer, receiver, trustee, lessee, agent, or employee of such carrier or person, or for any other person authorized by such carrier or person to receive information, knowingly to disclose to or permit to be acquired by any person other than the shipper or consignee, without the consent of such shipper or consignee, any information concerning the nature, kind, quantity, destination, consignee, or routing of any property tendered or delivered to such common carrier or other person subject to this act for transportation in interstate or foreign commerce, which information may be used to the detriment or prejudice of such shipper or consignee, or which may improperly disclose his business transactions to a competitor, or which may be used to the detriment or prejudice of any carrier; and it shall also be unlawful for any person to solicit or knowingly receive any such information which may be so used. * * *

livery were furnished to Encinal by Swayne & Hoyt, Ltd., Pacific Coast agent of Calmar Steamship Corporation. Calmar rarely calls at any East Bay Terminal except Encinal, its regular East Bay terminal. Ordinarily, cargo destined to other East Bay terminals is discharged at San Francisco and delivered by barge.

In defense of this practice, witness for Swayne & Hoyt testified that Encinal was Calmar's agent and that the lists were sent in order to prevent misdelivery of freight not consigned for Encinal discharge. Another defense, urged by Encinal, is that the information was available to anyone at the custom house in San Francisco; and that in any event, such information was not used to the detriment or prejudice of any shipper or consignee.

The justification given is not convincing. The giving and receiving of such information was not necessary to insure proper delivery of freight. And even though it was not used to the prejudice of shippers or consignees, it was the kind of information which, as the statute reads, "may be used" to the detriment of a shipper or which "may improperly disclose his business transactions to a competitor."

[fol. 25] Commenting on the similar provision of the Interstate Commerce Act, section 15 (11), the Interstate Commerce Commission stated in *Matter of Freight Bills*, 38 I. C. C. 91:

> * * * the purpose of the provision in question was to put it (the carrier) under an affirmative restraint against disclosure, apparently to the extent necessary to protect the interest of "such shipper or consignee."

Also, in *Albree* v. *Boston and Maine Railroad*, 22 I. C. C. 303, 321, that Commission said:

> the above language clearly indicates an intent upon the part of Congress to secure to every shipper immunity from a disclosure of his business from the hands of a common carrier * * *.

Conceding the purpose to be as testified, nevertheless, receiving the information was a violation of section 20.

Notice of tariff changes

Reasonable notice of rate changes is not always accorded by San Francisco, Oakland and Stockton. For instance,

Oakland has made many rate changes without prior notice. Stockton changed its warehouse space assignment rate on August 28, 1939, effective August 11, 1939; and issued an entirely new tariff on December 15, 1939, on 15 days' notice.

We stated in *Transportation of Lumber Through Panama Canal*, 2 U. S. M. C. 143 (1939) at page 149:

> The failure of a public utility to publish and post a tariff of rates is indefensible. The failure to give adequate notice of rate changes is unjust and unreasonable to the shipping public, because sudden rate changes often result in unexpected losses to, and unjust discrimination against, the shipper or consignee. This is a disruptive factor both in the transportation and marketing of the commodity involved. The question is whether the shipping acts which we administer contemplate the correction by us of these abuses.
>
> * * * To relieve the terminal operator of the duty to give publicity to his charges for services performed by him in place of the carrier would defeat the purpose of the act. The power conferred upon us to prescribe reasonable regulations and practices in connection with the handling and delivery of property whether by carriers or terminal operators, and to prevent undue preference and prejudice in connection therewith, is broad enough to prevent the defeat of the purpose of the act by any such device or situation.

The privately owned terminals are required under State law to file on 30 days' notice. The Northwest Marine Terminal Association, comprising the marine terminals at ports on Puget Sound, the Columbia River and at Portland, Ore., give 30 days' notice of tariff changes.

[fol. 26] The conclusion is warranted that failure of the respondents named to give adequate notice of tariff changes is an unreasonable practice.

Free time

Free time is the period allowed for the assembling of cargo upon, or its removal from the wharves. Upon its expiration, demurrage charges are assessed. The uniformity of the free time period allowed at the larger terminals is more apparent than real. Generally, 10 days are permitted except that San Francisco allows 5 days in coastwise and intercoastal

(in-bound) trade and 7 days in the foreign and offshore trades (in-bound). But under the stress of competition, most of the larger terminals, in cases of emergencies,[5] extend the free time either to cover the additional number of days of delay to the vessel, or, in the case of Oakland, to such number of days as "is warranted and equitable in each individual case", according to the judgment of the Port Manager. This practice appears to be based on the theory that if the shipper is not at fault the terminal operator should waive the demurrage. Obviously, when demurrage is waived, transit shed space, the most valuable in the terminal, is being wasted. This involves a cost which has to be recouped somewhere and it is unreasonable that those shippers who do not use the piers beyond the free time should be forced to bear the burden either directly or indirectly. The practice also affords an opportunity to discriminate between shippers. In *Storage of Import Property*, 1 U. S. M. C. 676, 682, 1937), we said:

> The furnishing of valuable free storage facilities to certain shippers and consignees beyond a reasonable period results in substantial inequality of service as between different shippers of import traffic, and is beyond the recognized functions of a common carrier.

[fol. 27] And, in *Storage Charges under Agreements 6205 and 6215*, 2 U. S. M. C. 48, 52 (1939) we stated:

> All receivers of cargo must use the piers, and any preferred treatment, by charges or otherwise, of certain classes of cargo results in discrimination against other cargo.

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[5] Howard, Encinal, Parr-Richmond, and Stockton publish the following provision: "When vessels are delayed beyond the free time period because of weather, accidents, break-downs or other emergencies, such free time period will be extended to cover the additional number of days of delay to the vessel."

San Francisco grants no extensions of free time. But it permits storage at reduced rates, called "bulkhead storage rates," on cargo which cannot be removed from the pier through circumstances over which the shipper has no control.

Members of Northwest Marine Terminal Association grant no extensions of free time. They, as well as terminals at Los Angeles, provide 10 days' free time in intercoastal (out-bound) and foreign and offshore trades. In other trades these terminals, like San Francisco, grant 5 days except that at Seattle and Tacoma the time is 10 days on coastwise out-bound. The California Commission, in *Case No. 4090, supra*, after a study of the various factors involved in the assembling and distribution of cargo at San Francisco Bay Ports, location of points of origin, vessels' organizations, customs clearance, efficient loading and other matters, recommended free time periods, exclusive of Sundays and holidays, as follows:

Table 1.

	In-bound Days	Out-bound Days
Coastwise and Inland Waterway	5	5
Intercoastal	5	7
Foreign	7	7
Transhipment	10	10

Under the recommendation, free time commences (a) at 8:00 A. M. of the first day following the day freight is unloaded from railroad cars or vehicles, or (b) at 8:00 A. M. of the first morning after complete discharge of the vessel, and terminates upon date goods are actually delivered to railway cars, vehicles, barges or vessels. There were two exceptions to the rule for the allowance of free time; (1) allowing Parr-Richmond 21 days, including Sundays and holidays, for the assembling of petroleum or petroleum products, in packages, destined for Trans-pacific ports; and (2) providing that in case vessel is delayed because of certain emergencies, free time will be extended 10 days, the demurrage rates prescribed, except the handling charge, to be charged thereafter against the vessel.

[fol. 28] Counsel for the Commission recommended the prescription of these periods and exceptions thereto as reasonable regulations under section 17 of the Shipping Act, 1916. Nearly all of the witnesses who testified on this subject favored stricter free time regulations than those now in effect. With few exceptions, respondents, in their reply briefs, showed little opposition to the periods recommended, most of their comments being directed to the exceptions proposed. Witness for Parr-Richmond testified that

a free time period of 21 days is necessary at that terminal for petroleum products destined to Transpacific ports, in order to avoid considerable overtime expense for which no compensation is received. There is a conflict of opinion as to when free time should commence, and as to the propriety of the exception extending free time when the vessel is delayed. In *Storage of Import Property*, supra, we prescribed the free time period and carriers were allowed to establish reasonable rules and regulations in connection therewith. On the whole, this disposition of the question has proven satisfactory.

Upon consideration of the evidence outlined above, the free time period set forth in Table 1 is found to be reasonable and proper. Respondent's rules, regulations and practices with respect to free time, in so far as they permit free time allowances greater than outlined in said table, exclusive of Sundays and holidays, are unduly prejudicial and preferential in violation of section 16 of the Shipping Act, 1916, as amended, and unreasonable in violation of section 17 of that act. This finding is without prejudice to the establishment of a free time period not in excess of 21 days, including Sundays and holidays, on petroleum or petroleum products when destined to Trans-pacific ports; and without prejudice to the establishment of reasonable rules and regulations in connection with free time allowances.

Wharf demurrage and storage

Wharf demurrage is the charge accruing on cargo left in possession of the terminal beyond the free time period. The question here is whether respondents are unduly discriminating between such cargo and that removed during [fol. 29] the free time period. The principal evidence on this point is an analysis of the cost of providing wharf storage to determine whether that class of service is self-sustaining or is furnished at rates so low as to cast a burden upon other services.

There is a direct parallel between the problems faced by respondents and those of the wharfinger industry generally, as reported to Congress by the Federal Coordinator of Transportation. He found that:

> The diversity of interests representing parties engaged in furnishing wharfinger service is so great and the

practices which have developed in the industry are so lacking in uniformity as to promote widespread discrimination between those using or desiring to use such services. The industry is suffering from over-expansion of facilities and destructive competition, causing chronically low earnings. (74 Cong. 1st. Sess., House Document No. 89, Pages 56-57).

The wide divergence of interests is accounted for mainly by the type of ownership and the size of the various terminals.

Generally speaking, profit-making is not the primary objective of the operators of the publicly owned terminals. Success of the terminal operations of Oakland and Stockton is measured by the industrial development of the respective cities. Carrying charges, which under the present rates cannot be paid out of terminal revenues, are met by taxation. As stated, San Francisco is precluded by law from fixing its rates so as to yield a profit. Its primary concern is to clear the piers for intransit cargo and its penalty wharf demurrage rates are designed to, and do, accomplish that purpose. However, in order to be competitive, it provides a lower "bulkhead" storage rate for cargo not occupying essential transit space.

Differences in the amount of space available for wharf storage at their terminals account largely for the conflict of interests among the East Bay operators, including Stockton. Encinal, Howard and Stockton, due to their limited facilities, are compelled to shift or high pile much of their cargo to make room for transit operations. Encinal high piles about 86 percent, Howard 60 percent, and Stockton 68 percent of their wharf demurrage cargo. Generally speaking, these respondents favor a penalty rate high [fol. 30] enough either to force the cargo off the pier during free time or induce the cargo owner to declare it for storage during that period. They would set the storage rate high enough to cover the cost of extra handling and high piling. On the other hand, Oakland and Parr-Richmond, with considerable unused space and little high piling required, oppose rates which reflect that expense. The following table presents a comparison of the size of transit shed areas and average number of tons handled per square foot of shed

area by principal respondents for either the fiscal years 1939 or 1940.

Table 2.

	Total square feet of shed area	Tons of general cargo handled	Average number of tons handled per square foot of shed area
Golden Gate and State	498,920	223,137	0.45
Oakland	714,850	595,029	0.83
San Francisco (37 piers)	4,147,284	3,789,977	0.91
Stockton	354,495	395,158	1.11
Parr-Richmond	239,905	345,716	1.44 [1]
Howard	226,470	386,439	1.70
Encinal	313,710	560,760	1.79

[1] The average at Piers 1 and 3, where most storage service is performed, is 0.60.

In addition, Stockton and Oakland have warehouse facilities adjacent to their terminals with floor space totaling 184,000 square feet and 125,180 square feet, respectively, which are available for space rental. Who the lessees will be and the rates they pay at Stockton, are matters within the discretion of the respective operators. Naturally, this space comes into competition with the limited storage facilities of other terminals. How serious this competition can be is attested by the fact that Oakland's space rate of 3 cents per square foot produces a monthly rate on canned goods of approximately 22 cents as against 37½ cents at the present daily rate. Stockton refused to disclose its present rate which superseded a rate of 1½ cents per square foot per month, which would produce a rate of only 11 cents on canned goods.

The aggressive and destructive competition arising out of these conditions has resulted in a striking lack of uniformity in charges for the same or similar services and the general breakdown of wharf demurrage rates. The following table, showing the different charges per ton on one important commodity group, including canned goods, is illustrative:

[fol. 31]

Table 3.

	Number of days on hand after free time				
	3	15	30	60	90
Oakland, Stockton, Encinal, Howard and Parr-Richmond [1]	$0.0375	$0.1875	$0.375	$0.75	$1.125
State Terminal (includes 50¢ handling charge) [2]	0.65	0.65	0.90	1.20	1.50
Golden Gate [3]	0.15	0.15	0.40	0.70	1.00
San Francisco:					
Penalty Wharf Demurrage:					
Outbound Offshore Cargo [3]	0.075	1.075	2.575	5.575	8.575
Inbound cargo [4]	0.25	1.25	2.75	5.75	8.75
Bulkhead wharf demurrage [5]	0.125	0.375	0.625	1.125	1.625

[1] 1¼¢ per ton per day.
[2] First 20 days 15 cents per ton; next 30 days or fraction 25 cents per ton; succeeding periods of 30 days 30 cents per ton.
[3] 2½ cents per ton per day 1st to 3rd day; 5 cents per ton per day 4th to 7th day; 10 cents per ton per day for each succeeding day.
[4] 25 cents per ton for first 5 days or part thereof; 50 cents per ton for each succeeding period of 5 days or part thereof.
[5] 12½ cents per ton (W/M) for each 7 days or part thereof.

The rates have been so reduced and the rules and practices so liberalized that it is difficult to distinguish between demurrage services and warehouse storage services. Apparently the only difference is in the responsibility of the terminal, that is, to deliver to the truck from storage, while under wharf demurrage, the truck comes to the pile. At the low rate of 1¼ cents per ton per day the shipper may leave the cargo on demurrage for extended periods before it equals storage charges. Goods paying demurrage may be high piled one day, at a cost of 20 to 25 cents per ton to the terminal, and delivered the next day with no compensation other than the 1¼ cents per ton per day.

Chronically low earnings are the inevitable result of the conditions outlined above. As will be demonstrated, the present rates as a whole produce revenues which are far below the cost of the service as computed according to the Edwards-Differding formula. The general theory of this formula is that the responsibility of providing adequate revenues for essential terminal facilities rests upon the cargo and the carrier. The charge for such service is made [fol. 32] to cover the direct cost incurred in rendering the service and some portion of the joint or overhead costs which are properly attributable to it.

Edwards and Differding analyzed costs applicable to the vessel, such as dockage and service charges, and costs in

connection with cargo [6] such as tolls and wharf demurrage and storage. They determined the portions and costs of the physical plant to be compensated by the vessel and the cargo. In addition, they prepared a study of the pile characteristics of different commodities in connection with floor areas required for their storage. Taking the lowest combination of handling and floor space costs, that of Encinal and Howard, respectively, they constructed a scale of wharf storage and demurrage rates, hereinafter called the *4090 scale*, which was recommended by the California Commission in *Case No. 4090 Supra*. See Appendix, columns 4 and 5.

The *4090 scale* is approximately 33 percent higher than the level of rates in effect in 1935, which is substantially equivalent to the present basis. In view of the testimony that costs have increased materially since 1935, and labor efficiency has decreased, there can be no question that the present level as a whole is far from confiscatory. Any doubt on this score is dispelled by a study prepared for this proceeding showing a comparison of revenues, expenses, and unit costs of demurrage based on the formula. The result of the cost studies at Encinal, Howard, and Stockton, is shown in the following table:

[fol. 33] Table 4.

	Encinal year ended 10/31/1939	Howard year ended 10/31/1939	Stockton year ended 6/30/1940
Revenue	$24,289.35	$31,359.46	$15,935.80
Expense	59,572.98	45,033.49	34,441.72
Loss on basis of existing rates	35,283.63	13,674.03	18,505.92
Average monthly revenues per ton, all commodities	.312	.426	.645
Unit costs:			
Fixed costs per ton, excluding high-piling	.336	.489	.072
High piling	.680	.372	.184
Variable Costs			
Overhead per ton per 30 days	.115	.153	.204
Floor space cost per square foot per 30 days	.057	.031	.077

[6] An analysis was made of the cost of floor space, checking cargo to or from the shippers, miscellaneous handling or high piling of cargo, and overhead costs for superintendence, accounting, billing, claims, insurance, watchmen, etc.

Canned goods is the heaviest moving and most competitive commodity handled by respondents in outbound traffic. The cost per ton per month of handling this commodity, based on the unit costs developed above, excluding high piling, is approximately 88 cents at Encinal and Howard and $1.75 at Stockton.[7] The revenue at current rates is 37.5 cents. Note that Encinal, with the lowest unit cost per ton, failed by 50.5 cents per ton per month, or 134 percent, to earn the actual cost of its wharf storage service. Stockton, with the highest cost, failed by $1.375 per ton per month, or 367 percent. The comparison in the Appendix of minimum costs on 14 commodities, column 10, with present revenue thereon, column 3, indicates that costs greatly exceed earnings.

No analysis was made of Parr-Richmond's current operations because its general cargo operations are not considered typical in the East Bay area. But based on cost of floor space in 1935 of 7.83 cents at its terminal No. 3, where most Storage service is performed, and the lowest unit cost for variable and non-variable overheads found in 1935, excluding moving, high piling and checking costs, its pres- [fol. 34] ent rates are not compensatory. For instance, on canned goods the revenue is 37.5 cents, cost 74.21; slate granules, revenue 30, cost 64.03; and steel sheets, revenue 30, cost 36.63.

Unit costs at other terminals could not be developed because of the accounting methods they use. However, Oakland and San Francisco submitted general data which, when considered with the cost developed by Howard, Encinal and Stockton, indicate that their rates are far from compensatory. The average monthly demurrage revenue per ton received on all commodities at Golden Gate and State terminals is 30.9 cents, and by Oakland 24.5 cents. It will be noted that Oakland's revenue is considerably below the fixed cost developed for normal piling at Encinal, the lowest cost terminal in the area, even excluding floor space cost which Oakland contends is not properly includible because the space would be idle if not used for storage.

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[7] Includes fixed cost per ton, (excluding high piling), overhead and floor space computed on basis of .057, .031 and .077 cents, respectively, x 7.4 square feet which is the space occupied by a ton of canned goods normally piled.

In fact, Oakland's revenue under existing rates on canned goods does not equal its floor space cost alone, without any allowance for additional costs of handling, high-piling, checking or making partial deliveries, which services admittedly are performed as to some cargo. Unit construction costs of piers and wharves available for demurrage and storage at Oakland range from $3.84 to $4.39 per square foot as compared with $2.95 at Encinal. Therefore, it is reasonable to conclude that Oakland's space cost under the Edwards-Differding formula would not be less than at Encinal. As indicated in footnote 7, floor space cost on canned goods for 30 days at Encinal, computed according to the formula, would amount to 42 cents, which compares with Oakland's revenue for the same period of 37½ cents. The deficit of 4½ cents at Oakland would be increased to 19½ cents, if 15 cents, which is the portion of the handling charge (Appendix, Column 4) imposed to cover the cost of making partial deliveries, were added.

The need for an upward revision in wharf storage rates is also evidenced by the income statements of respondents for the calendar year 1939 or fiscal year 1940. The result of their operations is illustrated by the following table:

[fol. 35] Table 5

	Net Income	Loss
Oakland	$78,950.67 (1)	$95,859.43 (2)
Stockton	29,447.47	99,491.55 (3)
Encinal		20,758.30
Howard		7,473.95
San Francisco	215,356.85 (4)	

1. If loss from airport operations be excluded.

2. If interest on bonds paid by City (other than interest on bonds assignable to airport) be included.

3. If revenue from county tax funds be deducted.

4. No deduction made for depreciation.

The foregoing analysis of costs shows unmistakably that users of wharf storage service are not providing their proper share of essential terminal revenues. It must be apparent also that a disproprotionate share of this burden is being shifted to users of other terminal services whose charges are based on rates considered to be reasonable in 1935. Singularly enough, Howard's deficit from all operations in 1939 would have been wiped out and net profit

shown if wharf storage charges had been based on the *1090 scale*, assuming that it would have increased revenue by 33 per cent. The same would be true as to both Howard and Encinal if they had charged only the actual cost of furnishing the service in 1939 as developed by the formula.

The next question is whether granting storage at non-compensatory rates is unduly preferential and prejudicial in violation of section 16 [8] of the Shipping Act, 1916, and an unreasonable practice in violation of section 17 [9] thereof. The storage cases previously mentioned, 1 U. S. M. C. 676, and 2 U. S. M. C. 48, establish two propositions. First, the [fol. 36] furnishing of free storage facilities beyond a reasonable period results in substantial inequality of service as between shippers. Clearly, the furnishing of such facilities at non-compensatory rates is merely a less serious form of the same offense. Second, and preferred treatment by charges or otherwise of certain classes of cargo results in discrimination against other cargo. In the latter case respondents were found to be defeating the free time regulation prescribed in the former case by assessing merely nominal storage charges on coffee after free time. As to such charges, we stated:

> They must, therefore, be deemed to be a constituent part of a practice pertaining to the handling, storing

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[8] That it shall be unlawful for any common carrier by water, or other person subject to this Act, either alone or in conjunction with any other person, directly or indirectly—

First. To make or give any undue or unreasonable preference or advantage to any particular person, locality, or description of traffic in any respect whatsoever, or to subject any particular person, locality, or description of traffic to any undue or unreasonable prejudice or disadvantage in any respect whatsoever.

[9] Every such carrier and every other person subject to this act shall establish, observe and enforce just and reasonable regulations and practices, relating to or connected with the receiving, handling, storing, or delivering of property. Whenever the board finds that any such regulation or practice is unjust or unreasonable it may determine, prescribe, and order enforced a just and reasonable regulation or practice.

> or delivery of property. We not only have the authority under section 17 to prescribe just and reasonable regulations and practices, but also the power to order them enforced. Clearly, therefore, any means or device tending to nullify or interfere with the enforcement of such regulations and practices must be subject to our condemnation.

The charges were found to be in violation of both section 16 and 17, and respondents were ordered to desist from establishing and collecting storage charges on coffee lower than on other import commodities. This decision was upheld in *Booth Steamship Company, et al., v. United States*, 29 Fed. Supp. 221. The charges here involved may or may not be nominal. But the court intimated in the *Booth case* that the charges there were more than nominal, and stated:

> The Commission * * * had the authority and the power under the Shipping Act to conduct this investigation and make its findings and conclusions and its order.

The subject of non-compensatory storage charges was exhaustively treated by the Interstate Commerce Commission in *Ex Parte 104, Part VI, Warehousing and Storage of Property by Carriers at the Port of New York, N. Y.*, 198 I. C. C. 134, 216, I. C. C. 291. This case involved the operation of warehouses by railroads serving New York through which the carriers rendered storage services to shippers below cost as an inducement to use their lines. In 216 I. C. C. 291, 351, that Commission said:

> In the instant case it is established that those persons who are able to avail themselves of storage and handling at the carriers' non-compensatory rates, and whose costs from shipside to destination are thereby [fol. 37] reduced by the amount of the difference between compensatory rates and the non-compensatory rates, receive an undue and unreasonable preference or advantage over those persons whose commercial practices will not permit of their placing their goods in storage at New York, but require direct shipment from shipside to destination. Not only is the latter class of persons unduly or unreasonably prejudiced or disadvantaged, but such prejudice and disadvantage extents to all persons who are compelled to bear the carriers'

> transportation rates which are dissipated by their storage practices. The provisions of section 3 conflict with the asserted rights of the respondent carriers * * * to sell their storage at a price less than the cost of that service.

This decision was upheld by the Supreme Court in *Baltimore & Ohio Railroad Company et al., v. United States et al.*, 305 U. S. 507. At page 524 the court said:

> Since the carrier warehouse rates, as found by the Court, * * * and Commission, are not open to all shippers alike, there is violation of §§ 2 and 3 (1) prohibiting discrimination and unreasonable prejudice. The rail transportation rates have charged against them the loss occasioned by warehousing practices designed to attract a volume of rail business.

Oakland contends that there can be no discrimination since the rates are open to all shippers alike. In a sense this is true. However, the commercial practices of those shippers who supply the major portion of tonnage handled by respondents obviously do not permit of their placing their goods in storage. Furthermore, it should not be overlooked that the practice of furnishing one service below cost has the tendency to prevent any downward revisions of rates for other services however justified they may be. Clearly, such a practice is unreasonable.

The decisions cited are ample authority for condemning the existing wharf storage rates and practices as being in violation of section 16 and 17, prohibiting undue prejudice and unreasonable practices.

This brings us to a consideration of the level of rates which respondents should observe as a reasonable practice. Counsel for the Commission recommend prescription of the *4090 scale* shown in column 4 and 5 of the Appendix. Those rates were designed to serve a double purpose—to clear the transit spaces within a reasonable time, and, where the terminal facilities permit, to enable the operator to store goods at rates commensurate with the cost of the service [fol. 38] as determined in 1936. A penalty demurrage charge of 5 cents per day is exacted for the first five days beyond the expiration of free time. This charge is intended to compel the removal of cargo off the dock or into storage. Cargo which goes on storage either within or at the expira-

tion of free time is required to pay a handling charge. This handling charge compensates the terminal operator for a portion of the fixed costs which attach to cargo that is placed on time storage. Such fixed costs include handling, delivery to consignee at the end of storage, high piling where required, billing, and certain overhead expenses incidental to the receiving and delivery of cargo on storage. Storage charges are provided on basis of a fifteen-day period. The rates and charges were based upon a consideration of cost of providing the service, ability of the cargo to pay, and competitive conditions. The California Commission states that the proposed increase averages less than 15 cents per ton per month on all commodities for the periods over which they are stored.

The soundness of the Edwards-Differding studies, which are embodied in the proposed scale, is amply demonstrated by the record. However, various objections have been raised to the scale and its method of application.

Howard favors a daily, as well as a period basis. It contends that the abrupt increase of charges on the sixth day after expiration of free time would discourage short-term storage, especially on canned goods, and divert cargo to warehouses. Mr. Differding testified that a period basis, which is applicable at the San Francisco facilities, would be more equitable than a daily basis which is now in effect at East Bay Terminals and Stockton. His objection to a daily basis is that it allows the cargo owner to remove his goods before they have been on storage long enough to cover all fixed charges. He expressed doubt that the collection of storage charges could be properly policed if the cargo owner is allowed to choose between a daily and a period basis.

Howard and Encinal contend that the proposed handling charges and period storage rates are too low. Encinal would more than double the handling charge on certain com- [fol. 39] modities; Howard on practically all. Both favor a monthly period basis with slightly increased charges. Admittedly, the *4090 scale* is too low. But with only general testimony as to the increased cost since 1935 of record and no current data as to the other rate making factors, we would not be justified in attempting to fix compensatory charges on individual commodities. Stockton favors the proposed basis generally but advocates the addition of a wharf-placement charge to cover the cost of transferring storage cargo from the wharf to off-wharf storage areas.

Oakland and Parr-Richmond, with a large amount of unused transit space available, criticize the inclusion of the cost of high piling and extra handling because at their terminals little additional handling of cargo is necessary. This argument overlooks the fact that the handling charge is directly related to the most efficient use of floor space. If it was cheaper to leave goods as the stevedores or the shipper dropped them, this cost was used; but where the savings in floor space cost more than compensated for the expense of high piling over the period the goods remained on storage, costs based on high piling were used as they resulted in a lower cost to the shipper. Also, the argument ignores the necessity for an adequate return on the costs of floor space because if the cargo is not handled by high piling or otherwise, it follows that additional costs are automatically incurred. Consequently, the return of revenue to the terminal operator for the transit shed floor space must be derived from an increase in the wharf demurrage rates to compensate the terminal for the excess space used when the goods are not high piled, in comparision with the economy of space which is accomplished when the goods are high piled. The result would be a substantial increase in the wharf demurrage and storage rates or, in the alternative, the wharf demurrage should be plussed by a handling charge.

There is also the general objection made by Oakland and San Francisco that the Edwards-Differding studies did not cover their operations. But this fact loses its significance when it is demonstrated that the average monthly revenue per ton received by Oakland is lower than the fixed cost [fol. 40] per ton of the lowest cost terminal in the Bay area, even excluding costs of high piling, variable overhead and floor space; and its revenue under existing rates on canned goods is lower than its cost of floor space alone. It is not believed that any increases in storage rates would result from the establishment of the *1090 scale* at the San Francisco assigned piers.

Many other matters, dealing with individual problems in connection with wharf storage, were touched upon by various respondents. However, the present record will not support an order designed to do more than correct, to a limited extent only, the basic problem of respondents, namely, chronically low earnings.

Upon consideration of all the evidence, we are of the opinion that the *1090 scale*, including the 5-cent penalty rate,

should be adopted. This conclusion does not rest upon the theory that such basis is a "cure-all", but that it (1) will bring about uniformity on a minimum basis which incidentally is not in excess of the cost of the service to any of the respondents, (2) that it will remove many of the abuses disclosed by the record, and (3) that it will provide a standard from which departures can be made on individual commodities as they appear to be justified by further proof.

In considering further relief, respondents should not overlook the possibilities of solving their problems through section 15 agreements. In *Transportation of Lumber, etc.*, supra we refrained from prescribing rules and regulations for terminals, with the statement that:

> "For the present we suggest that self-regulation through the medium of section 15 agreements approved by us is a much simpler and more satisfactory solution of the problem. A cooperative working arrangement among the terminals, designed to bring about a stable terminal rate structure for the handling of intercoastal lumber, would not only promote the orderly transportation and marketing of lumber, but would foster fair and regulated competition among the terminals themselves."

Respondents have taken the first step in this direction by forming associations and filing cooperative working agreements which have been approved by us. These agreements, fully implemented and utilized, and strictly adhered to, will [fol. 41] go far toward avoiding further regulation.

Leasing and rental arrangements

The remaining question is whether the practice of Oakland and Stockton of leasing or renting space in warehouses adjacent to their piers at rates below their regular wharf storage rates is unreasonable and unduly preferential of the lessees of such space. In its reply brief, Oakland states that its facilities so used will henceforth be used for other purposes and that it will discontinue the dual set of rates at all operative facilities. Witness for Stockton testified that property stored in its leased facilities is there awaiting sale and that subsequently it may enter into either water, rail or truck transportation. He stated that when cargo in water transportation is stored in the warehouses the regular tariff rates are applied. The record does not war-

rant a finding that the practice in question is unlawful. However, respondents are admonished that any space rental device used for the purpose of unduly discriminating between storers of cargo in water transportation is strictly in violation of section 16 of the Shipping Act, 1916, as amended.

Findings

We find:

1. That respondents including Board of State Harbor Commissioners for San Francisco Harbor, Board of Port Commissioners of the City of Oakland and Stockton Port District, are "other persons subject to this act," as defined in section 1 of the Shipping Act, 1916, as amended.

2. That respondents Board of Port Commissioners of the City of Oakland, Howard Terminal, and Stockton Port District are carrying out agreements within the purview of section 15 of the Shipping Act, 1916, as amended. Said agreements, namely the agreement between Board of Port Commissioners of the City of Oakland and McCormick Steamship Company, dated March 1, 1932, the agreement between said Board and Howard Terminal, dated November 5, 1914, and the agreement between Stockton Port District and Port [fol. 42] of Stockton Grain Terminal, dated July 23, 1936, should be filed immediately with the Commission for approval. Pending compliance, the record will be held open.

3. That respondent Encinal Terminals collected service charges from McCormick Steamship Company and Quaker Line on cargo billed to, but not delivered at Encinal, notwithstanding Encinal performed no service in connection with such cargo. Said practice is not authorized by Encinal's tariff and is unreasonable in violation of section 17 of the Shipping Act, 1916, as amended.

4. That respondent Encinal Terminals has knowingly received from Swayne & Hoyt, Ltd., lists of consignees desiring delivery at another terminal, without the consent of said consignees. Said act is in violation of section 20 of the Shipping Act, 1916, as amended.

5. That respondents Board of State Harbor Commissioners for San Francisco Harbor, Board of Port Commissioners of the City of Oakland and Stockton Port District have failed in certain instances to give reasonable notice of tariff

changes. Unless good cause exists for shorter notice, 30 days' prior notice of tariff changes should be accorded by said respondents. No order in this connection is deemed necessary now, but any shipper or consignee adversely affected by lack of adequate notice of tariff changes should bring the matter to our attention.

6. That there is lack of uniformity in, and application of, free time rules, regulations and practices of respondents; and that the manner in which they are applied affords opportunity for unequal treatment of shippers. Said rules, regulations and practices are unduly prejudicial and preferential in violation of section 16, and unreasonable in violation of section 17 of the Shipping Act, 1916, as amended. We prescribe, and shall order enforced a regulation providing that free time allowances should be no greater than the periods set forth in Table 1 of this report, [fol. 43] exclusive of Sundays and holidays, without prejudice to the establishment of reasonable rules and regulations in connection with free time allowances and to the establishment of a free time period not in excess of 21 days, including Sundays and holidays, on petroleum products when destined to Trans-pacific ports.

7. That respondents' rates, rules, regulations, and practices relating to wharf demurrage and wharf storage are lacking in uniformity; that, as a whole, respondents are according wharf storage services at non-compensatory rates which result in unequal treatment of users and non-users of such services. Said rates, rules, regulations and practices are unduly prejudicial and preferential in violation of section 16, and unreasonable in violation of section 17 of the Shipping Act, 1916, as amended. We prescribe, and shall order enforced as a reasonable regulation (1) a penalty charge of 5 cents per ton per day upon cargo remaining beyond the free time period and not declared for storage; when cargo is not declared upon the expiration of the fifth day, it shall automatically go into storage and the rates and charges hereinafter recommended shall thereafter apply, (2) the handling charges appearing in Column 4 of the Appendix to be charged when cargo goes into storage, and (3) the rate for 15-day periods or fractions thereof appearing in column 5 of the Appendix, to be charged while cargo is in storage after it has been declared for storage or after it automatically goes into storage upon the expira-

tion of the fifth day after the end of the free time period. The rates and charges herein prescribed are considered to be on a minimum basis, and the finding is without prejudice to the establishment of higher rates and charges wherever justified, and should not be construed to require the reduction of present rates which are higher than the prscribed level.

8. That in the enforcement of the regulations herein prescribed, it is necessary that respondents file their tariffs with the Commission.

An appropriate order will be entered.

APPENDIX

Comparative statement showing for East Bay terminals, daily wharf demurrage rates and revenue for 30 days under existing tariffs: Rates proposed by California Railroad Commission in Case 4090 and revenue thereunder for 30 days; and minimum cost of storage with normal piling for 30 days on those commodities for which floor space requirements are available rates, revenue, and costs in cents per ton of 2,000 pounds

	Rate and Revenue Under Existing Tariffs		Rates and Revenue under Case 4090 Rates			Minimum Cost per ton for 30 days Floor Space Cost			
Commodity (1)	Daily Rate (2)	Revenue 30 days (3)	Handling Charge (4)	Storage per 15-day period or Fraction (5)	Revenue for 30-day period (6)	Sq. feet Required per ton (7)	Cost at 3.19 cents per Sq. Foot (8)	All Other Costs (9)	Total Costs (10)
Merchandise, N. O. S.	2	60	40	20	80				
Ammonia, sulphate of	1½	45	30	15	60	15.38	49.06	45.23	94.29
Apricot kernels	1¼	37½	30	25	80				
Beans, dried, in sacks	1	30	15	12½	40	10.00	31.90	45.23	77.13
Canned goods, N. O. S. in cases, outbound.	1¼	37½	25	12½	50	7.40	23.60	45.23	68.83
Cotton	1¼	37½	30	15	60	14.00	44.66	45.23	89.89
Cotton linters	1¼	37½	30	20	70	17.00	54.23	45.23	99.46
Compound, viz., cleaning, scouring and washing, in pkgs.	1¼	37½	15	12½	40	7.54	24.05	45.23	69.28
Fertilizers:									
Nitrate of soda, in sacks						6.85	21.85	45.23	67.08
Potash, in sacks									
Ammonia, phosphate, cyanamide, super-phosphate, urea	1½	45	30	15	60	7.43	23.70	45.23	68.93
Fruit, dried, in bags or cases	1¼	37½	30	15	60				
Grain, N. O. S.	¾	22½	25	12½	50	7.52	23.99	45.23	69.22
Hops, in bales	4	120	30	45	120				
Iron and steel, held in uncovered areas	1	30	20	10	40				
Meal and meal cake (oil cake, sesame seed meal)	1¼	37½	30	15	60				
Peas, dried	1¼	37½	15	12½	40				

Pipe, iron and steel, held in uncovered areas	1	30	15	12½	40				
Rice, in sacks	1¼	37½	30	15	60				
Scrap, iron or steel	1	30	15	10	35				
[fol. 45]									
Seed, mustard, hemp or sesame	1¼	37½	30	15	60	15 38	49 06	45 23	94 29
Shook	2¾	82½	30	25	80				
Sisal	3	90	50	17½	85	24 10	76 88	45 23	122 11
Soda ash, bags	1½	45	30	15	60	12 27	39 14	45 23	84 37
Steel Sheets	1	30	15	10	35	1 66	5 30	45 23	50 53
Sugar	1¼	37½	30	15	60	7 00	22 33	45 23	67 56
Tin Plate	1	30	15	10	35				
Tires, pneumatic	2	60	50	75	200				
Tomato, puree [2]	(2½¢ per case per season)[2]			(2½¢ per case per season)[2]					
Vehicles, motor, on wheels	10	300	50	125	300				
Wool: In Bales	3	90	30	30	90				
In Bags	5	150							
Veneer, wallboard	7	210	50	50	150				

[1] Exception: When beans are held on wharf demurrage for period beyond which a total of $1.00 per ton of 2000 pounds has been assessed within a season, no further charge will be made for that season. Under this provision "season" ends August 31st next.

[2] When season wharf demurrage rate is requested by shipper at time of delivery of merchandise to terminal, the rate for the season commencing on and after August 15th and ending March 1st next, is 2½ cents per case, payable in advance.

Note: Daily penalty rate proposed by California Commission. A charge of 5 cents per ton per day shall be assessed upon all cargo remaining beyond the free time period and not declared for storage, except that when cargo is not declared upon the expiration of the fifth day the demurrage rates set forth above (columns 4 and 5) shall thereafter apply.

[fol. 46] ORDER

At a Session of the United States Maritime Commission, Held at its Office in Washington, D. C., on the 11th day of September, A. D., 1941

No. 355

Practices, Etc. of San Francisco Bay Area Terminals

This case having been instituted by the Commission on its own motion and without formal pleading, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and the Commission on the date hereof, having made and entered of record a report stating its conclusions and decision thereon, which report is hereby referred to and made a part hereof;

It is ordered; That respondent Encinal Terminals be, and it is hereby notified and required to cease and desist, and hereafter abstain from the violations of the Shipping Act 1916, as amended, herein found in findings No. 3 and No. 4.

It is further ordered, That respondents be, and they are hereby, notified and required to cease and desist, on or before October 27, 1941, and thereafter to abstain from allowing greater periods of free time than the periods set forth in Table 1 of the report herein, exclusive of Sundays and holidays, without prejudice to the establishment of reasonable rules and regulations in connection with free time allowances and the establishment of a free time period not in excess of 21 days, including Sundays and holidays, on petroleum products when destined to Trans-pacific ports;

It is further ordered, That respondents be, and they are hereby, notified and required to cease and desist, on or before October 27, 1941, and thereafter to abstain from publishing, demanding or collecting wharf demurrage and wharf storage rates which shall be less than the minimum rates found reasonable in Finding 7 herein, namely, (1) a penalty charge of 5 cents per ton per day to be charged [fol. 46a] on cargo remaining beyond the free time period and not declared for storage; when cargo is not declared upon the expiration of the fifth day, it shall automatically go into storage, (2) the handling charges appearing in

column 4 of the Appendix hereto to be charged when cargo goes into storage, and (3) the rates for 15-day periods or fractions thereof appearing in column 5 of the Appendix hereto, to be charged while cargo is in storage after it has been declared for storage or after it automatically goes into storage upon the expiration of the fifth day after the end of the free time period;

It is further ordered, That respondents be, and they are hereby, notified and required to file with the Commission and keep open to public inspection, schedules showing all the rates and charges for the furnishing of wharfage, dock, warehouse, or other terminal facilities in connection with a common carrier by water;

It is further ordered, That these proceedings shall be held open pending compliance with the order herein, and that said order be without prejudice to the rights of respondents or any of them, or of any interested party to apply in the proper manner for a modification as to any specified rate, charge, rule, or regulation; and

It is further ordered, That as to all other matters not specifically covered by this order, this proceeding be, and it is hereby, dismissed.

By the Commission.

(Sgd.) W. C. Peet, Jr. Secretary. (Seal.)

[fol. 47] EXHIBIT "B"

BEFORE THE UNITED STATES MARITIME COMMISSION

Docket No. 555

In the Matter of SERVICES, RATES, CHARGES, TOLLS, RENTALS, Rules, Regulations, Classifications, Agreements, Acts, Practices, and Operations of the San Francisco Bay Area Terminals Named Herein.

PETITION OF RESPONDENTS STATE OF CALIFORNIA AND BOARD OF STATE HARBOR COMMISSIONERS FOR SAN FRANCISCO HARBOR, NAMED HEREIN AS BOARD OF STATE HARBOR COMMISSIONERS, PORT OF SAN FRANCISCO, FOR RECONSIDERATION

[fol. 48] Come now State of California and Board of State Harbor Commissioners for San Francisco Harbor, named

herein as Board of State Harbor Commissioners, Port of San Francisco, respondents in the above entitled proceeding, and respectfully petition the United States Maritime Commission to grant a reconsideration of its order heretofore made and filed herein on September 11, 1941, and in support of said petition, respectfully show:

I

That said order is erroneous in that it denied said respondents' motion to dismiss said proceeding as to said respondents, which motion was made by said respondents at the hearing in said proceeding, and in each of their briefs filed herein, and at the oral argument in said proceeding, in the following words, as follows:

[fol. 49] "Said respondents move to dismiss the above entitled proceeding against respondents, Board of State Harbor Commissioners for San Francisco Harbor and the State of California, upon the following grounds, to-wit:

1. That the United States Maritime Commission has no jurisdiction of either of said respondents or of the subject matter of said proceeding so far as it relates to said respondents or either of them.

2. That the United States Maritime Commission is without authority to investigate any of the practices or acts of the State of California or the Board of State Harbor Commissioners for San Francisco Harbor, an agency of the State of California.

3. That there is no constitutional authority for Congress to extend or exercise its regulatory power in any manner over either of said respondents.

4. That the Shipping Act of 1916, as amended, is not intended to apply and does not apply to or include these respondents, the State of California or the Board of State Harbor Commissioners for San Francisco Harbor, and that the United States Maritime Commission is not authorized or empowered by statute or otherwise, to investigate or regulate either of said respondents with reference or in relation to any of the matters or things referred to in the Shipping Act of 1916, as amended, and particularly as referred to in Sections 1, 15, 16, 17 and 20 of said act, or otherwise."

II

The said order is erroneous in that it finds and determines that the United States Maritime Commission had and has jurisdiction of each of these respondents in this proceeding.

III

That said order is erroneous in that it finds and determines that Congress has constitutional power to regulate respondent, State of California, a state of the United States of America, acting by and through respondent, the Board of State Harbor Commissioners for San Francisco Harbor, an agency of said state, in the ownership and/or operation of a wharf.

[fol. 50]

IV

That said order is erroneous in that it did not find and determine that Congress has no power to regulate any owner and/or operator of a wharf or any wharfinger.

V

That said order is erroneous in that it determines that Congress, in enacting the Shipping Act of 1916, as amended, intended to give and did give the United States Maritime Commission power to regulate respondent, State of California, a state of the United States, in the ownership and/or operation of a wharf, by and through the Board of State Harbor Commissioners for San Francisco Harbor, an agency of said state.

VI

That said order is erroneous in that it determined that each of these respondents is an "other person subject to this act" as that term is used in Section 1 of the Shipping Act of 1916, as amended.

VII

That said order is erroneous in that it prescribes for all of the respondents herein, a shorter and different free time allowance from the allowance which is presently in effect in the tariff of these respondents, and orders all of said respondents to cease and desist, on or before October 27, 1941, and thereafter to abstain from allowing greater periods of free time than those set forth in Table 1 of the report referred to in said order.

VIII

That said order is erroneous in that it does not find that wharf demurrage rates on those parts of the wharves and [fol. 51] piers of all the respondents in this proceeding which are used for "intransit purposes" should be penalty rates sufficiently high to force goods off of said parts of said wharves and piers.

IX

That said order is erroneous in that, in determining the rates of wharf demurrage and storage required by said order to be charged by all of the respondents herein, no consideration is given to a charge for moving goods declared for storage, from wharves to off wharf storage areas or warehouses.

X

That said order is erroneous in that, in prescribing minimum demurrage and wharf storage rates and finding such rates to be reasonable, said order is based entirely upon the assumption that demurrage and storage rates should be compensatory and that no account is taken of the necessity for penalty rates upon those parts of facilities of all of the respondents which are devoted primarily to in transit operations.

XI

That said order is erroneous in that, in prescribing minimum wharf demurrage and wharf storage rates, the Commission based its finding of the amount and the reasonableness of such rates upon a purported study of the cost to the respondents herein, of furnishing wharf storage and facilities for allowing goods to remain on the wharves and piers of said respondents beyond the allowable free time, which said costs were based upon a study and investigation which was more than four (4) years old, and which did not include any study of costs for furnishing wharf [fol. 52] storage and such facilities, upon the piers and wharves of these respondents.

XII

That said order is erroneous in that without jurisdiction to make any finding, determination or order in this pro-

ceeding as to either of these respondents, the Commission made all of the findings, determinations, and orders, hereinabove mentioned in this petition, and further ordered these respondents to file with the Commission and keep open to public inspection, schedules showing all rates and charges for the furnishing of wharfage, dock, warehouse and other terminal facilities in connection with a common carrier by water.

XIII

That the said order violates Section 9 of Article I of the United States Constitution in that it is a regulation of commerce which gives preference to the ports of the states of Washington and Oregon over the respondents in this proceeding in two respects, namely, by prescribing higher wharf storage rates for these respondents while permitting such other ports to maintain lower rates than those prescribed, and by prescribing a shorter free time period for these respondents than is permitted to remain in effect in such other ports. That such other ports in the states of Washington and Oregon are in competition with these respondents in connection with the transpacific and intercoastal trades.

These respondents respectfully urge the Commission that it reconsider its said order for each of the reasons above [fol. 53] set forth, and in that connection to reread the original, and reply briefs filed by these respondents in this proceeding. No good would be achieved to repeat here what was set forth in those briefs. There is little to add to the points that were made, and these respondents are convinced of the soundness of their position.

In view of the fact that the order of the Commission becomes effective on October 27, 1941, it is respectfully requested that the Commission determine forthwith whether or not it will reconsider the issues involved in this docket. That if reconsideration is given, the effective date of the order be postponed until such a reasonable time after the determination on reconsideration has been reached. That if reconsideration be not granted, that these respondents receive notice to that effect a reasonable time before Octo-

ber 27, 1941, in order that they may take such steps in regard to the order as they may be advised.

Dated at San Francisco, California, October 15, 1941.

Respectfully submitted, State of California and Board of State Harbor Commissioners for San Francisco Harbor, by J. F. Marias, President of Board of State Harbor Commissioners for San Francisco Harbor, Earl Warren, Attorney General of the State of California, Lucas E. Kilkenny, Deputy Attorney General, Attorneys for Said Petitioners.

[fol. 54] State and Northern District of California,
City and County of San Francisco, ss:

J. F. Marias, being first duly sworn, deposes and says:

That he is a duly appointed, qualified and acting officer of the State of California, one of the respondents and petitioners herein, and a duly appointed, qualified and acting member and President of the Board of State Harbor Commissioners for San Francisco Harbor, one of the respondents and petitioners herein, and duly authorized to sign this petition and to make this verification for and in behalf of both of said respondents; that he is the person who so signed said petition; that he has read the foregoing petition and knows the contents thereof; that the same and the facts stated and set forth therein are true of his own knowledge except as to those matters therein stated on information or belief, and as to those matters, he believes it to be true.

J. F. Marias.

Subscribed and sworn to before me, this 15th day of October, 1941. Ella Cook Kelly, Notary Public, in and for the City and County of San Francisco, State of California. (Seal.) My Commission expires December 23, 1944.

[fol. 55] Certificate of Service

I hereby certify that I have this day served the foregoing document upon all parties of record in this proceeding by

mailing via first class mail, postage prepaid, a copy to each such party in sufficient time to reach such party on the due date.

Dated at San Francisco, California, this 15th day of October, 1941.

Lucas E. Kilkenny, Attorney for Petitioners.

[File endorsement omitted.]

[fol. 55-1] In the Southern Division of the United States District Court for the Northern District of California.

No. 22002-L

City of Oakland, a Municipal Corporation, Acting by and Through Its Board of Port Commissioners, Petitioner,

vs.

United States of America and United States Maritime Commission, Defendants

Petition and Bill for Injunction—Filed October 21, 1941

Comes now the City of Oakland, a municipal corporation, acting by and through its Board of Port Commissioners, who seeks in this proceeding to enjoin, set aside, annul and suspend, so far as it relates to petitioner, a certain affirmative order of the defendant United States Maritime Commission made and entered on the 11th day of September, 1941, in a proceeding before said Commission and designated, "In the Matter of Services, Rates, Charges, Tolls, Rentals, Rules, Regulations, Classifications, Agreements, Acts, Practices and Operations of the San Francisco Bay Area Terminals Named Herein", and numbered 555 on the docket of said Commission, and for cause of action respectfully alleges:

[fol. 55-2] I

That the City of Oakland is a municipal corporation duly organized and existing under and by virtue of the constitution and laws of the State of California, and governed by a freeholders' charter; that the Board of Port Commissioners of the City of Oakland is a department of the City of Oakland, duly organized and existing under and

by virtue of such charter; that said Board of Port Commissioners, by virtue of such charter, is vested with the sole and exclusive jurisdiction of the City of Oakland over that certain area of the City described in said charter and designated as the Port Area, and has and exercises by virtue thereof all the power of the City of Oakland with respect to all of its waterfront, tide and submerged lands and facilities for the promotion and accommodation of navigation constructed thereon.

II

The United States of America is made defendant in this suit pursuant to Section 31 of the Shipping Act, 1916, as amended (39 Stat. 738, C. 341, Section 31; 46 U. S. Code, Section 830), 28 U. S. Code, Section 41, Subd. (28) and Title 28, U. S. Code, Sections 43 to 48 inclusive.

That defendant United States Maritime Commission, hereinafter referred to as the Commission, is an administrative agency created by the Shipping Act, 1916, and acts amendatory thereof and supplemental thereto.

The affirmative order of the United States Maritime Commission, hereinafter mentioned, was made in a proceeding instituted by the Commission, the matter involved in said proceeding arising in the Northern District of California, Southern Division.

III

This petition invokes the jurisdiction of this honorable [fol. 55-3] court under, and such jurisdiction is based upon, the provisions of 28 U. S. Code, Section 41, Subd. 28, and of the Shipping Act, 1916, as amended, 46 U. S. Code, Section 830, which provide for actions to enjoin, set aside, annul or suspend, in whole or in part, the orders of the defendant Commission; and this petitioner further alleges that the jurisdiction of the Court depends upon the fact that this action arises under the constitution and laws of the United States of America; that the proceeding herein instituted is brought to suspend and set aside an order of the Commission, and the proceeding is brought in the judicial district wherein are the residences of the parties concerning whose acts the investigation, hearing and order of the Commission were made, and the district where the matters complained of in the proceeding before the Commission arise is in the jurisdiction of this honorable Court.

IV

That on the 7th day of November, 1939, defendant Commission at a session held at its office in Washington, D. C., upon its own motion, made its order instituting the proceeding above mentioned; that said order initiated an investigation to determine whether the services, rates, charges, tolls, rentals, rules, regulations, classifications, agreements, acts, practices and operations of all or any of the respondents named in said order were in violation of Sections 15, 16, 17 and 20 of the Shipping Act, 1916 as amended; that your petitioner was named as one of the respondents in said proceeding; that thereafter hearings in said proceedings were held in the City and County of San Francisco on February 13 to 21, 1940, inclusive, and after continuances, on October 7 to 9, 1940, inclusive, on which last date the hearing was concluded and the matters before the Commission submitted on briefs to be filed subsequently.

[fol. 55-4] At the beginning of the hearing, and on said 13th day of February, 1940, your petitioner made a motion to dismiss the proceedings as against this petitioner, which motion was based on the grounds, first, that Congress could not constitutionally regulate the operations, including the rates, practices and other functions of this petitioner, in the carrying out of its governmental function of operating the municipal wharves of the City of Oakland; second, that Congress had not intended to include a municipal corporation within the definition of other persons subject to the act as defined in Section 1 of the Shipping Act, 1916; and, third, that Congress had not intended to regulate the rates as such of any wharfinger. Said motion was denied by the Examiner appointed by the Commission to conduct said hearing.

At the conclusion of the hearing and on the 9th day of October, 1940, petitioner again moved to dismiss the proceeding as to petitioner on the same grounds, and that said motion was again denied.

That thereafter your petitioner filed with said Commission its opening and closing briefs in which it urged not only all the points included within the motions to dismiss, but also all the other points hereinafter set forth as to which your petitioner alleges that said order of said Commission was unlawful.

That thereafter and on July 9, 1941 said proceeding was orally argued before the Commission at Washington, D. C., at which argument your petitioner appeared and in which it participated urging all of said points.

V.

That thereafter and on the 11th day of September, 1941 said Commission made and filed its Order in said proceeding wherein and whereby it found, among other things:

[fol. 55-5] 1. That Congress had constitutional power to regulate the operations of this petitioner in the matter now carried on.

2. That your petitioner was within the definition of "other persons" as defined in Section 1 of the Shipping Act of 1916.

3. That your petitioner is required by Section 15 of the Shipping Act, 1916 to file with and have approved by the Commission a certain lease with Howard Terminal, one of the other respondents named in said proceeding, dated November 5, 1914, by which said Howard Terminal leased certain waterfront facilities from the City of Oakland.

4. That your petitioner is required by Section 15 of the Shipping Act, 1916 to file with and have approved by the Commission a certain agreement between the City of Oakland and McCormick Steamship Company, a common carrier by water, dated March 1, 1932, whereby said McCormick Steamship Company occupies certain waterfront facilities.

5. That your petitioner has failed in certain instances to give reasonable notice of tariff changes and prescribing a thirty (30) day prior notice in the future.

6. That the free time periods allowed by your petitioner for the removal of cargo from the facilities under its jurisdiction are unduly prejudicial and preferential in violation of Section 16, and unreasonable in violation of Section 17 of the Shipping Act, 1916 as amended, and that any such allowance greater than the period set forth in Table 1 attached to said Order which in general reduces such free time allowance from the existing ten (10) day period allowed by your petitioner to five (5) and seven (7) days will in the future be unduly prejudicial and preferential and unreasonable.

7. That your petitioner's rates, rules, regulations and [fol. 55-6] practices relating to wharf demurrage and wharf storage are non-compensatory resulting in unequal treatment of users and non-users of such services. That said rates, rules, regulations and practices are unduly prejudicial and preferential in violation of Section 16 and unreasonable in violation of Section 17 of the Shipping Act, 1916 as amended and that in the future the assessing and collecting of any charge for such wharf demurrage and wharf storage lower than the schedule of charges prescribed in said order would — unduly prejudicial and preferential and unreasonable. That the rates prescribed for such wharf storage by said Order are set forth in Exhibit 1 made a part hereof and attached hereto.

VI.

That said proceeding was initiated by said Commission on its own motion by the Order of November 7, 1939 above referred to; that said Order recited that it appeared that certain of the services, rates, charges, tolls, rentals, rules, regulations, classifications, agreements, acts, practices and operations of the respondents named therein, including your petitioner were unlawful. That thereafter and throughout the pendency of said hearings and in the matter of filing briefs and in the oral argument before the Commission above referred to said Commission at all times was represented by its attorney who examined and cross-examined witnesses, who filed briefs in said proceedings and who argued orally before the Commission on the points involved. That said hearings were conducted by the Chief Regulations Examiner of said Commission, who is an officer of and who is under the direction of said Commission. That said Order is based solely on the opinion and factual testimony of one T. G. Differding, who was an expert especially employed by the Commission to aid it in said proceeding. That there is [fol. 55-7] no other testimony in the record of said proceeding upon which any order fixing the level of rates could be based. That by reason of the premises, the Commission in said proceeding acted as accuser, prosecutor, witness and Judge; that by reason thereof this petitioner was denied the fair hearing guaranteed it by the Constitution of the United States and that by reason thereof it was deprived of its property without due process of law.

VII

That the lands upon which your petitioner carries on the activities complained of in said order of September 11, 1941 in their original state were tidelands and submerged lands belonging to the State of California by virtue of its sovereignty and conveyed by the State of California to the City of Oakland by Stats. of 1911, p. 1254, and Stats. of 1911, p. 1258, and statutes amendatory and supplemental thereto; that all of said statutes convey said lands to the City of Oakland in trust for the accommodation and promotion of commerce and navigation; that the services, rates, charges, tolls, rentals, rules, regulations, classifications, agreement, acts, practices and operations of this petitioner which were considered in said proceeding by said Commission and which were made the subject of the order hereinbefore specified were promulgated and carried forward by said petitioner pursuant to the trusts imposed or created by said statutes and by the laws of the State of California and the charter of the City of Oakland; and your petitioner alleges that in connection with all of said matters it was engaged in the performance of a governmental function as a public ageney and representative of the State of California; that there was no evidence adduced in any of said hearings to the contrary.

VIII

That the Congress has and had no power to authorize the United States Maritime Commission to regulate this peti- [fol. 55-8] tioner in the exercise of the powers vested in petitioner or in connection with any of the matters referred to in said order of said Commission of September 11, 1941 and particularly set forth hereinbefore.

IX

That the Shipping Act, 1916, as amended, does not by its terms purport to apply, and does not apply, to petitioner.

X

That by reason of the law and the facts established at said hearing before said Commission, the Commission has and had no jurisdiction of this petitioner, or of any of the matters or things investigated in said proceeding so far as they relate to petitioner and said order of September

11, 1941, so far as it relates to this petitioner, or to any of its activities, was and is erroneous and void and beyond the power of the United States Maritime Commission.

XI

That said order is erroneous and void for each of the following reasons:

1. In that it did not grant the motion of this petitioner to dismiss the proceeding as to it;

2. In that it found and determined that United States Maritime Commission had and has jurisdiction of this petitioner;

3. In that it found and determined that Congress has constitutional power to regulate this petitioner in the ownership and operation of wharves;

4. In that it found and determined that Congress in enacting the Shipping Act of 1916, as amended, intended to and did give the United States Maritime Commission power to regulate this petitioner in the ownership and operation of a wharf;

5. In that it found and determined that this petitioner is [fol. 55-9] an "other person" as that term is defined in the Shipping Act, 1916;

6. In that it found and determined that Congress had empowered the Commission to regulate the rates as such of any wharfinger;

7. In that it found and determined that the lease between petitioner and Howard Terminal, dated November 5, 1914, and the agreement between petitioner and McCormick Steamship Company, dated March 1, 1932, are agreements within the purview of Section 16 of the Shipping Act, 1916;

8. In that it did not find or determine that the rates presently assessed and collected by this petitioner for the furnishing of wharf storage are sufficient to meet the out-of-pocket costs of such service;

9. In that it found and determined that the wharf storage rates presently assessed and collected by this petitioner are not compensatory;

10. In that it found and determined that the wharf storage rates presently assessed and collected by this petitioner must be compensatory.

XII

That said affirmative Order of the Commission is erroneous and that it affirmatively appears that no study of the cost of furnishing wharf storage or of any of petitioner's operations, services, allowances or practices was made and that no evidence with respect thereto was introduced.

XIII

That said affirmative Order of the Commission is erroneous in that it purports to require this petitioner to file with the Commission schedules showing all rates and charges for the furnishing of wharves, docks, warehouses and [fol. 55-10] other terminal facilities in connection with a common carrier by water. That said affirmative order of the Commission is erroneous in that it requires your petitioner to give at least thirty (30) days' prior written notice of tariff changes, contrary to law.

XIV

That said Order is erroneous and without jurisdiction in that it assumes that Congress has empowered the Commission to render any order in connection with the rates of wharfingers in respect to the compensatory or non-compensatory character of such rates.

XV

That said affirmative order is void and of no effect for the further reason that it violates Section 9 of Article I of the Constitution of the United States in that it is a regulation of commerce which gives preference to the Ports of the States of Washington and Oregon over the petitioner in two respects, namely, by prescribing higher wharf storage rates for this petitioner while permitting the Ports of the States of Washington and Oregon to maintain rates lower than those prescribed and by prescribing a shorter free time period for your petitioner than is permitted to remain in effect in such other ports. That such other ports in

the States of Washington and Oregon are in competition with this petitioner in connection with the trans-Pacific and intercoastal trades.

XVI

That said affirmative Order is erroneous and void in that it directly deprives petitioner of its property without due or any process of law in violation of the fifth amendment to the Constitution of the United States and in this behalf petitioner alleges that compliance with said affirmative Order [fol. 55-11] will compel your petitioner to suffer irreparable loss as herein alleged during the continuance of the effectiveness of said Order.

XVII

That said affirmative Order of the Commission is predicated upon a misapplication of the law to the facts and is erroneous and void and beyond the power of said Commission and is in violation of the law in such cases made and prescribed.

XVIII

That your petitioner heretofore and on the 15th day of October, 1941 filed with said Commission its petition for reconsideration of said affirmative Order of September 11, 1941 but your petitioner is informed and believed that said Commission has not yet acted upon said petition and will not act thereupon until subsequent to the 27th day of October, 1941.

XIX

That said affirmative Order compels this petitioner to comply therewith on or before October 27th, 1941 and to cease and desist from the doing of the things thereby prohibited and to observe the requirements and things thereby prescribed, all as hereinbefore particularly set forth, on or before said 27th day of October, 1941. Unless the enforcement, operation and execution of said Order is restrained and suspended during the course of this proceeding irreparable injury will result to this petitioner in that it will be compelled to move storage cargo from the space where it has been declared for storage to an off storage area or warehouse without being compensated therefor, and further in that the failure of this petitioner to comply with said

Order will subject petitioner to the severe penalties prescribed in the Shipping Act 1916 as amended pursuant to which each day constitutes a separate violation and is sub-
[fol. 55-12] ject to a separate and exceedingly heavy penalty.

XX

That by reason of the premises the petitioner has no plain, speedy, adequate or any remedy at law.

[fol. 55-13] Wherefore petitioner prays:

(a) That process in due form issue out of and under the seal of the Honorable Court, directed to defendants as required by law and that due and proper service of such process and of this petition be forthwith made by filing a copy thereof in the office of the Department of Justice of the United States and another copy in the office of the United States Maritime Commission pursuant to the provisions of Section 209 Judicial Code (Title 28 U. S. Code, Sec. 45) and thereafter the defendants and each of them be required on or before a date to be specified in the notice of process issued by this Court to appear herein and to answer this petition, but not under oath, answer under oath being hereby expressly waived.

(b) That as soon as practicable this Court convene a special statutory Court of three (3) judges as required by Title 28, U. S. Code, Sec. 47, and that a preliminary injunction be entered herein restraining, enjoining and suspending, until the further order of this Court the effect and enforcement of said affirmative order of September 11, 1941, until the further order of this Court.

(c) That inasmuch as the matter is urgent by reason of the fact that said affirmative order of the United States Maritime Commission requires the petitioners to comply therewith on or before October 27, 1941, the petitioners pray that pending the hearing upon the application for a preliminary or interlocutory injunction, a temporary restraining order be issued by this Honorable Court restraining, enjoining, and suspending the operation of the aforesaid affirmative order until the said application for a preliminary or interlocutory injunction shall have been heard and determined.

(d) That after final hearing, this Court adjudge, order [fol. 55-14] and decree that the said affirmative order of the United States Maritime Commission is, and has at all times been beyond the lawful authority of the said Commission and wholly unlawful and void, and that the said affirmative order be perpetually set aside, suspended, cancelled and annulled and the enforcement thereof perpetually enjoined, insofar as it affects or relates to this petitioner.

(e) That your petitioner shall have such other and further relief in the premises as in equity and justice may appertain, and as may be deemed by this Honorable Court to be adequate and proper under the circumstances.

City of Oakland, a Municipal Corporation, Acting by and Through Its Board of Port Commissioners, by A. H. Abel, Port Manager.

Charles A. Beardsley, Port Attorney; W. Reginald Jones, Assistant Port Attorney, Attorneys for Petitioner.

[fol. 55-15] *Duly sworn to by A. H. Abel. Jurat omitted in printing.*

[fol. 55(16)] EXHIBIT 1.

Commodity (1)	Handling Charge (4)	Storage per 15-day period or Fraction (5)	Revenue for 30-day period (6)
Merchandise, N. O. S.	40	20	80
Ammonia, sulphate of	30	15	60
Apricot kernels	30	25	80
Beans, dried, in sacks [1]	15	12½	40
Canned goods, N. O. S. in cases, outbound	25	12½	50
Cotton	30	15	60
Cotton linters	30	20	70
Compound, viz., cleaning, scouring and washing in pkgs.	15	12½	40
Fertilizers:			
Nitrate of soda, in sacks Potash, in sacks Ammonia, phosphate, cyanamide, superphosphate, urea	30	15	60
Fruit, dried, in bags or cases	30	15	60
Grain, N. O. S.	25	12½	50
Hops, in bales	30	45	120
Iron and Steel, held in uncovered areas	20	10	40
Meal and meal cake (oil cake, sesame seed meal)	30	15	60
Peas, dried	15	12½	40
Pipe, iron and steel, held in uncovered areas	15	12½	40
Rice, in sacks	30	15	60
Scrap, iron or steel	15	10	35
Seed, mustard, hemp, or sesame	30	15	60
S hook	30	25	80
Sisal	50	17½	85
Soda ash, bags	30	15	60
Steel Sheets	15	10	35
Sugar	30	15	60
Tin Plate	15	10	35
Tires, pneumatic	50	75	200
Tomato, puree [2]	(2½¢ per case per season)		
Vehicles, motor, on wheels	50	125	300
Wool: In bales	30	30	90
In bags			
Veneer, wallboard	50	50	150

[1] Exception: When beans are held on wharf demurrage for period beyond which a total of $1.00 per ton of 2000 pounds has been assessed within a season, no further charge will be made for that season. Under this provision "season" ends August 31st next.

[2] When season wharf demurrage rate is requested by shipper at time of delivery of merchandise to terminal, the rate for the season commencing on and after August 15th and ending March 1st next, is 2½ cents per case, payable in advance.

Note: Daily penalty rate proposed by California Commission. A charge of 5 cents per ton per day shall be assessed upon all cargo remaining beyond the free time period and not declared for storage, except that when cargo is not declared upon the expiration of the fifth day the demurrage rates set forth above (columns 4 and 5) shall thereafter apply.

[fol. 56] IN THE SOUTHERN DIVISION OF THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA

No. 22000-R

STATE OF CALIFORNIA and BOARD OF STATE HARBOR COMMISSIONERS FOR SAN FRANCISCO HARBOR, Petitioners,

vs.

UNITED STATES OF AMERICA and UNITED STATES MARITIME COMMISSION, Defendants

No. 22002-L

CITY OF OAKLAND, a Municipal Corporation, Acting by and through its Board of Port Commissioners, Petitioner,

vs.

UNITED STATES OF AMERICA and UNITED STATES MARITIME COMMISSION, Defendants

No. 22005-R

STOCKTON PORT DISTRICT, a Public Corporation, Plaintiff,

vs.

UNITED STATES OF AMERICA and UNITED STATES MARITIME COMMISSION, Defendants

[fol. 57] ORDER CONSOLIDATING ACTIONS FOR TRIAL, PERMITTING INTERVENTION, AND GRANTING INTERLOCUTORY INJUNCTION—Filed November 10, 1941

The above entitled actions came on regularly to be heard on the 29th day of October, 1941, before the above entitled Court, Honorable Curtis D. Wilbur, Honorable Harold Louderback and Honorable Michael J. Roche sitting as a Statutory Three-Judge Court, on the applications and motions of the petitioners and plaintiffs in the above entitled actions, for an interlocutory injunction enjoining the carrying into effect and enforcing against said petitioners and plaintiffs of that certain affirmative order made and entered by the United States Maritime Commission, one of the defendants herein, on September 11, 1941, in that certain proceeding before said Commission designated "In the

Matter of Services, Rates, Tolls, Charges, Rentals, Rules, etc. of the San Francisco Bay Area Terminals," and numbered 555 on the docket of said Commission.

Said applications and motions having been consolidated for hearing by order of said Court, and evidence on said applications and motions having been presented and the verified petitions of said petitioners and plaintiffs, and the affidavits of J. F. Marias and A. H. Abel having been read and filed, and it appearing and the Court finds:

That due and legal notice of such applications and of this hearing has been given in the manner provided by law;

That, unless such interlocutory injunction be granted, irreparable damage will result to petitioners and plaintiffs herein and the other respondents in said proceeding before said Commission in the following respects:

That the enforcement of free time allowance or wharf demurrage and storage rates provided for in said order will result in requiring the charging by said petitioners and plaintiffs and other respondents in said proceeding, of higher wharf demurrage and storage rates than those now in effect in either the San Francisco Bay Area or the com- [fol. 58] petitor ports at Tacoma, Seattle, Portland, Long Beach and other competing ports on the Pacific Coast, without effecting any changes in free time or wharf demurrage and storage rates of such competing ports, on many commodities moving in heavy volume from trans-Pacific points to transcontinental destinations in the United States via Pacific Coast ports, and between the Pacific Coast and the Atlantic Coast, and will result in diversion of traffic to said other ports on the Pacific Coast from the ports of said petitioners and plaintiffs herein, and other respondents in said proceeding, thereby causing each and all of them to suffer loss of port revenues, which cannot be recouped, and which loss will be irreparable;

That the enforcement of such free time allowances and wharf demurrage and storage rates against respondents in said proceedings before said Commission, other than the above named petitioners and plaintiffs, but not against said petitioners and plaintiffs, will cause diversion of traffic from such other respondents and consequent loss of revenue resulting in their irreparable damage;

That the enforcement of such free time allowances and wharf demurrage and storage rates compels the imposition

of handling charges, under certain conditions, by petitioners, State of California and Board of State Harbor Commissioners for San Francisco Harbor, contrary to their established practice of not handling cargo in any manner whatsoever, which charges cannot be recouped and which will result in irreparable damage to said petitioners;

That the wharf storage rates currently assessed by petitioner, City of Oakland, are set forth in said petitioner's tariff; that said tariff is established by ordinance of the Board of Port Commissioners, in accordance with the requirements of Section 211 of the Oakland City Charter; that the passage of a new ordinance would be required to amend the existing tariff in relation to wharf storage charges; that such an ordinance cannot be passed before [fol. 59] the lapse of seven days; and

That if said petitioners or plaintiffs or other respondents in said proceeding before said Commission should fail to comply with the said order of said Commission, such failure will subject said parties and each of them to severe penalties as prescribed in the Shipping Act of 1916, as amended, pursuant to which Act each day constitutes a separate violation, and is subject to a separate and exceedingly severe penalty. The imposition of such penalties upon such petitioners would cause them irreparable financial loss and damage;

And the Court having heard the arguments of counsel for petitioners and plaintiffs, and defendants, and of Joseph J. Geary, Esquire, and of Chalmers G. Graham, Esquire, amici curiae, and being fully advised in the premises;

It is Hereby Ordered that the above entitled actions be and they are hereby consolidated for trial; that any of the respondents in said proceeding, Docket No. 555, before the United States Maritime Commission shall be entitled to intervene in said actions within sixty (60) days from the date of this order; and

It Is Further Ordered, Adjudged and Decreed that, pending, and until, the final hearing and final determination of the above entitled actions, the said defendants, United States of America and United States Maritime Commission, their officers, agents, servants, employees and attorneys, and those persons in active concert or participation with them who receive actual notice of this order by personal service or otherwise, be and each of them is hereby

restrained and enjoined from carrying into effect or enforcing, directly or indirectly, in any respect or particular, that certain order made and issued on September 11, 1941, by the United States Maritime Commission in that certain proceeding before said Commission designated "In the [fol. 60] Matter of Services, Rates, Tolls, Charges, Rentals, Rules, etc. of the San Francisco Bay Area Terminals," and numbered 555 on the docket of said Commission, against any of the petitioners or plaintiffs in the above entitled actions and/or against any of the respondents in said proceeding before said Commission, and from requiring any of said petitioners and plaintiffs or respondents to carry out, obey, or observe in any respect or particular any of the terms, provisions, commandments, or conditions of said order of said Commission; and

That an interlocutory injunction in due form be issued accordingly.

Done in open court before this Statutory Three-Judge Court, convened pursuant to Title 28, Section 47, United States Code.

Dated at San Francisco, California, this 8 day of November, 1941.

Curtis D. Wilbur, United States Circuit Judge.
Michael J. Roche, United States District Judge.
Harold Louderback, United States District Judge.

Approved as to form as provided by Rule 22.

Frank J. Hennessy, United States Attorney; Esther B. Phillips, Assistant United States Attorney, Attorneys for Defendants, United States of America, and United States Maritime Commission.

[fol. 61] In District Court of the United States

No. 22000R

[Title omitted]

Answer of the United States of America and United States Maritime Commission—Filed Dec. 19, 1941

Come now the United States of America and United States Maritime Commission defendants in the abovemen-

tioned cause, by Frank J. Hennessy, United States Attorney in and for the Northern District of California, Southern Division, and answer the allegations contained in the petition and bill for injunction of the petitioners as follows:

[fol. 62]

I

Defendants admit the allegations of fact contained in paragraph I of the petition.

II

Defendants admit the allegations of fact contained in paragraph II of the petition, except that they deny that the United States Maritime Commission was created by the Shipping Act, 1916; and allege that the Commission was created by the Merchant Marine Act, 1936.

III

Defendants admit the allegations of fact contained in paragraph III of the petition.

IV

Defendants admit the allegations of fact contained in paragraph IV of the petition, except that defendants deny that the petitioners reserved their objection to the jurisdiction of the Commission and did not in any manner waive the same, and allege that said petitioners appeared generally in the proceeding subject to the ruling of the examiner denying petitioners' motion to dismiss; and defendants deny that the petition sets forth accurately the motion made by the petitioners at the conclusion of the hearing, and allege that annexed hereto marked Exhibit A is a true copy of the original motion filed by the petitioners.

V

Defendants deny the allegations contained in paragraph V of the petition, except that defendants admit that at the hearing in the proceeding referred to in the petition, there was evidence introduced with respect to the matters set forth in said paragraph V of the petition.

VI

Defendants deny each and every allegation, conclusion of fact and conclusion of law contained in paragraphs VI, VII, VIII, IX, and X of the petition.

[fol. 63] VII

Defendants deny each and every allegation, conclusion of fact and conclusion of law contained in paragraph XI of the petition, except that the defendants admit that evidence was introduced at the hearing that it is necessary to charge so called penalty rates on wharf storage and demurrage on the wharves and piers of the petitioners in certain circumstances.

VIII

Defendants deny each and every allegation, conclusion of fact and conclusion of law contained in paragraphs XII and XIII of the petition.

IX

Defendants admit the allegations contained in paragraph XIV of the petition; and allege that the petition for reconsideration referred to in said paragraph XIV was denied by the Commission on or about the 24th day of October, 1941.

X

Defendants deny the allegations contained in paragraphs XV, XVI and XVII of the petition.

XI

Defendants deny the allegations contained in paragraph XVIII of the petition, except that defendants admit and allege that the order of the Commission made on the 11th day of September, 1941, requires the petitioners to comply therewith on or before October 27, 1941, and to cease and desist from the practices specified in said order.

Wherefore, defendants pray:

1. That the complaint herein be dismissed; and

2. That the defendants have and recover of the petitioners the proper costs of this suit.

Frank J. Hennessy, United States Attorney. Esther B. Phillips, Assistant United States Attorney. Carl F. Farbach, General Counsel, United States Maritime Commission, Of Counsel.

[fol. 64] EXHIBIT A

BEFORE THE UNITED STATES MARITIME COMMISSION

No. 555

In the Matter of services, rates, charges, tolls, rentals, rules, regulations, classifications, agreements, acts, practices and operations of the San Francisco Bay area terminals named herein.

Special Appearance and Motion to Dismiss as to Respondents Board of State Harbor Commissioners for San Francisco Harbor and the State of California.

The State of California, made a respondent herein by the supplemental order of the United States Maritime Commission at a session thereof on February 3, 1940, and the Board of State Harbor Commissioners for San Francisco Harbor, made a respondent herein by the supplemental order of the United States Maritime Commission on November 30, 1939, under the name of Board of State Harbor Commissioners, Port of San Francisco, and specially appearing for the purpose of objecting to the jurisdiction of the United States Maritime Commission in this proceeding and investigation, move to dismiss the above entitled proceeding and investigation so far as it relates to said respondents or either of them, on the following grounds:

1. That the United States Maritime Commission has no jurisdiction of either of said respondents in this proceeding and investigation.

2. That the United States Maritime Commission has no jurisdiction of the subject of this proceeding and investigation so far as it relates to either of said respondents.

3. That there is no authority, statutory or otherwise, for such proceeding or investigation by the United States Maritime Commission so far as the same relates to any services, rates, charges, tolls, rentals, rules, regulations, classifica-
[fol. 65] tions, agreements, acts, practices, and/or operations of said respondents or either of them.

4. That the term "other persons subject to this act", as defined in Section 1 of the Shipping Act of 1916 as amended, does not include and does not apply to said respondents or either of them.

5. That the United States Maritime Commission is not authorized by the Shipping Act of 1916 as amended, or any other statute, and has no jurisdiction to inquire into or to investigate or to regulate any of the matters or things referred to or mentioned in the Shipping Act of 1916, and particularly in Sections 15, 16, 17 or 18 of said act, or in any other statute of the United States, so far as the same relate to or involve said respondents or either of them in the operation of the Port and Harbor of San Francisco or otherwise.

6. That the Congress of the United States has no power to regulate the State of California or the Board of State Harbor Commissioners for San Francisco Harbor in the operation of San Francisco Harbor or any of the property or facilities of said State or said Board used in connection with the operation of said harbor, or to regulate the fixing or collection of any rates or charges, or to make or enforce any rules, regulations, classifications, agreements, acts, practices and/or operations in connection with such operation.

7. That in establishing, constructing, maintaining and operating the Port and Harbor of San Francisco and all property and facilities used in connection therewith, including the fixing, adopting and collection of all rates and charges, and the making and enforcing of all rules, regulations, classifications, agreements, act-, practices and operations in connection with the operation of said port and harbor property and facilities, the State of California and the [fol. 66] Board of State Harbor Commissioners for San Francisco Harbor are acting in a governmental capacity and performing a governmental function, and, in so acting and performing such governmental function, are not subject to regulation by the Congress of the United States and are not subject to the jurisdiction of the United States Maritime Commission.

Wherefore, said respondents pray that this proceeding and investigation be dismissed as to them and each of them.

Earl Warren, Attorney General of the State of California, Lucas E. Kilkenny, Deputy Attorney General. Attorneys for said Respondents.

[fol. 66-1] IN THE DISTRICT COURT OF THE UNITED STATES

[Title omitted]

No. 22002R

ANSWER OF THE UNITED STATES OF AMERICA AND UNITED STATES MARITIME COMMISSION—Filed December 19, 1941

Come now the United States of America and the United States Maritime Commission, defendants in the above-mentioned cause, by Frank J. Hennessy, United States Attorney in and for the Northern District of California, Southern Division, and answer the allegations contained in the petition and bill for injunction of the petitioner as follows:

[fol. 66-2]

I

Defendants admit the allegations of fact contained in paragraph I of the petition.

II

Defendants admit the allegations of fact contained in paragraph II of the petition, except that they deny that the United States Maritime Commission was created by the Shipping Act, 1916; and allege that said Commission was created by the Merchant Marine Act, 1936.

III

Defendants admit the allegations of fact contained in paragraph III of the petition.

IV

Defendants admit the allegations of fact contained in paragraph IV of the petition, except that the defendants deny that the motions to dismiss the proceedings referred to in said paragraph IV were based upon all the grounds stated; and allege that the motion to dismiss was made on the ground that the Maritime Commission has no jurisdiction over a municipal corporation or a state agency, and that Congress has no constitutional power to regulate the governmental activities of such local body.

V

Defendants deny the allegations contained in paragraph V of the petition except that the defendants admit that the

Maritime Commission made and filed its order in the proceeding referred to in the petition on the 11th day of September, 1941; and admit and allege that the Maritime Commission made the findings set forth in the Report of the Commission hereto annexed as Exhibit A and by reference thereto made a part hereof.

VI

Defendants deny the allegations contained in paragraph VI of the petition, except that the defendants admit that said proceeding was initiated by the Maritime Commission on its own motion by the order of November 7, 1939, referred to in the petition and admit that said order recited that it appeared that certain of the services, rates, charges, [fol. 66-3] tolls, rentals, rules, regulations, classifications, agreements, acts, practices and obligations of the respondents named therein were unlawful; and admit that the Commission was represented by attorneys who examined and cross-examined witnesses, filed briefs in the proceeding and argued orally before the Commission on the points involved; and admit that said hearings were conducted by the Chief Regulations Examiner of the Commission, who is an officer of the Commission.

VII

Answering paragraph VII of the petition, defendants deny that in connection with all the matters referred to in said paragraph the petitioner was engaged in the performance of a governmental function and deny that there was no evidence adduced in any of said hearings to the contrary. Defendants have no information or belief as to the remaining allegations contained in paragraph VII of the petition, and because of their lack of information and belief thereof defendants deny the allegations contained in paragraph VII of the petition except as specifically admitted herein.

VIII

Defendants deny each and every allegation, conclusion of fact and conclusion of law contained in paragraphs VIII, IX, X, XI, XII, XIII, XIV, XV, XVI and XVII of the petition.

IX

Defendants admit the allegations contained in paragraph XVIII of the petition; and allege that the petition for re-

consideration referred to in said paragraph XVIII was denied by the Commission on or about the 24th day of October 1941.

X

Defendants deny the allegations contained in paragraph XIX of the petition, except that defendants admit that the order of the Commission made on the 11th day of September, 1941, requires the petitioner to comply therewith on or before October 27, 1941, and to cease and desist from the practices specified in said order.

XI

Defendants deny the allegations contained in paragraph XX of the petition.

[fols. 66-4–66-5] Wherefore, defendants pray:

1. That the petition and bill for injunction herein be dismissed; and

2. That the defendants have and recover of the petitioner the proper costs of this suit.

Frank J. Hennessy, United States Attorney, Esther B. Phillips, Assistant United States Attorney.

Carl F. Farbach, General Counsel, United States Maritime Commission, of Counsel.

[fol. 67] In District Court of the United States

No. 22000-R, No. 22002-L, No. 22005-L

[Title omitted]

Order Permitting Encinal Terminals, a Corporation, to Intervene and Be Treated as a Defendant in the Above Entitled Proceedings—Filed January 6, 1942

[fol. 68] Encinal Terminals, a corporation, having presented to this Court a duly verified petition praying that it be allowed to intervene in the above entitled cause, and be treated as a defendant; and, it appearing from said petition

that the said Encinal Terminals has an interest in the matters involved, and more particularly a specific interest in upholding and sustaining the decision and order of the United States Maritime Commission, which is sought to be enjoined in these proceedings;

Now, Therefore, It Is Ordered that Encinal Terminals, a corporation, be, and it is hereby, permitted to intervene in the above entitled causes, and to be treated as a defendant therein.

Michael J. Roche, United States District Judge, in the Southern Division of the United States District Court, for the Northern District of California.

Dated at San Francisco, California, this 6th day of January, 1942.

[fol. 69] In District Court of the United States

No. 22000-R, No. 22002-L, No. 22005-L

[Title omitted]

[fol. 70] Answer of Intervenor Encinal Terminals—Filed January 26, 1942

Comes now the Encinal Terminals, and, answering unto the allegations contained in the respective petitions and bills for injunction in the above proceedings, the intervenor, Encinal Terminals, answers as follows:

I

The intervenor Encinal Terminals coincides with, and therefore accepts, the allegations contained in the answers filed in all of said proceedings on behalf of the United States of America and the United States Maritime Commission, except that with respect to the allegations contained in Paragraph VIII of the answer of the United States of America and the United States Maritime Commission to the petition of the Stockton Port District, the intervenor Encinal Terminals admits that the Port of Stockton is in

active competition with the terminals of the San Francisco Bay area for the movement of cargo over the terminal facilities.

Wherefore, the intervenor Encinal Terminals prays that the complaints and/or petitions on file in the above entitled proceedings be dismissed.

Lillick, Geary, Olson & Charles, Ira S. Lillick, Joseph J. Geary, Attorneys for Intervenor, Encinal Terminals.

[fol. 71] *Duly sworn to by H. E. Van Horn. Jurat omitted in printing.*

[fol. 72] IN DISTRICT COURT OF THE UNITED STATES

No. 22000-R, No. 22002-L, No. 22005-L

[Title omitted]

[fol. 73] ORDER PERMITTING PARR-RICHMOND TERMINAL CORPORATION, A CORPORATION, TO INTERVENE AND BE TREATED AS A DEFENDANT IN THE ABOVE ENTITLED PROCEEDINGS—Filed January 7, 1942

Parr-Richmond Terminal Corporation, a corporation, having presented to this court a duly verified petition praying that it be allowed to intervene in the above entitled causes, and be treated as a defendant, and it appearing from said petition that the said Parr-Richmond Terminal Corporation has an interest in the matters involved, and more particularly a specific interest in upholding and sustaining the decision and order of the United States Maritime Commission as applied to the publicly-owned terminals, which is sought to be enjoined in these proceedings; and further that said Parr-Richmond Terminal Corporation is one of the respondents in the proceeding before the United States Maritime Commission and, as such, is entitled to intervene herein pursuant to the order heretofore made herein under date of November 8, 1941.

Now, Therefore, It Is Ordered that Parr-Richmond Terminal Corporation, a corporation, be, and it is hereby per-

mitted to intervene in the above entitled causes, and to be treated as a defendant therein.

——— ———, United States District Judge, in the Southern Division of the United States District Court, for the Northern District of California.

Dated at San Francisco, California, this 7th day of January, 1942.

Curtis D. Wilbur (sgd. Circuit Judge.)

[fol. 74] In District Court of the United States

No. 22000-R, No. 22002-L, No. 22005-L

[Title omitted]

[fol. 75] Answer of Intervener Parr-Richmond Terminal Corporation—Filed Jan. 23, 1942

Comes now Parr-Richmond Terminal Corporation, a corporation, intervener in the above entitled proceedings, and, answering the respective petitions and bills and complaint on file herein, admits, denies and alleges as follows:

I

Said intervener hereby refers to and by this reference incorporates herein, to the same extent as if set forth in full herein, the admissions, denials and allegations in the answers heretofore filed in said proceedings on behalf of the United States of America and the United States Maritime Commission; except that said intervener admits and alleges that said intervener is in competition with other terminals located at other ports on the Pacific Coast; and except that said intervener does not admit the reasonableness or validity of the order of the United States Maritime Commission under review in these proceedings with respect to any application of said order not herein under review.

Wherefore, intervener Parr-Richmond Terminal Corporation prays that the petitions and bills and complaint on file in the above entitled proceedings be dismissed, and for

such other and further relief as may be meet and proper in the premises.

Morrison, Hohfeld, Foerster, Shuman & Clark; F. C. Hutchens, Attorneys for Intervener Parr-Richmond Terminal Corporation.

[fol. 76] *Duly sworn to by T. A. Goodrick. Jurat omitted in printing.*

[fol. 77] IN DISTRICT COURT OF THE UNITED STATES

[Title omitted]

[fol. 78] ORDER PERMITTING HOWARD TERMINAL, A CORPORATION, TO INTERVENE AND BE TREATED AS A DEFENDANT IN THE ABOVE ENTITLED PROCEEDINGS—Filed January 7, 1942

Howard Terminal, a corporation, having presented to this Court a duly verified petition praying that it be allowed to intervene in the above entitled causes, and be treated as a defendant, and, it appearing from said petition that the said Howard Terminal has an interest in the matters involved, and more particularly a specific interest in upholding and sustaining the decision and order of the United States Maritime Commission, which is sought to be enjoined in these proceedings:

Now, Therefore, It Is Ordered that Howard Terminal, a corporation, be, and it is hereby, permitted to intervene in the above entitled causes, and to be treated as a defendant therein.

Curtis D. Wilbur, Circuit Judge, United States District Judge, in the Southern Division of the United States District Court, for the Northern District of California.

Dated at San Francisco, California, this 7th day of January, 1942.

[fol. 79] IN DISTRICT COURT OF THE UNITED STATES

[Title omitted]

[fol. 80] ANSWER OF INTERVENOR HOWARD TERMINAL—Filed January 28, 1942

Comes now the Howard Terminal, and answering unto the allegations contained in the respective petitions and bills for injunction in the above proceedings, the intervenor Howard Terminal answers as follows:

I

The intervenor Howard Terminal coincides with, and therefore accepts and adopts as its own, the allegation contained in the answers filed in all of said proceedings on behalf of the United States of America and the United States Maritime Commission, except that with respect to the allegation contained in Paragraph VIII of the answer of the United States of America and the United States Maritime Commission, to the petition of the Stockton Port District, the Intervenor Howard Terminal alleges that the Port of Stockton is in active competition with the terminals of the San Francisco Bay area for the movement of cargo over the terminal facilities.

Wherefore, the intervenor, Howard Terminal, prays that the complaints and/or petitions on file in the above entitled proceedings be dismissed.

Graham & Morse, Attorneys for Intervenor Howard Terminal.

[fol. 81] *Duly sworn to by C. P. Howard. Jurat omitted in printing.*

[fol. 82] IN UNITED STATES DISTRICT COURT

No. 22005-R. Civil

STOCKTON PORT DISTRICT etc.

vs.

UNITED STATES OF AMERICA and UNITED STATES MARITIME COMMISSION

ORDER DISMISSING CAUSE—February 26, 1942

Pursuant to a stipulation of dismissal heretofore filed herein, It Is Ordered that this cause be and the same is hereby dismissed.

[fol. 83] IN UNITED STATES DISTRICT COURT

[Title omitted]

MINUTE ENTRY OF TRIAL—February 26, 1942

These two (2) above entitled causes heretofore consolidated for trial came on this day for trial; Lucas E. Kilkenny, Esq., appearing as attorney for the State of California and Board of State Harbor Commissioners for San Francisco Harbor; W. Reginald Jones, Esq., appearing as attorney for the City of Oakland, etc.; Esther B. Phillips, Assistant United States Attorney, appearing as attorney for the defendants; Joseph J. Geary, Esq., appearing as attorney for Encinal Terminals, Intervenor; F. C. Hutchens, Esq., appearing as attorney for Parr-Richmond Terminal Corporation, Intervenor; and Robert Mackenzie, Esq., appearing as attorney for Howard Terminals, Intervenor. On motion of Miss Esther B. Phillips it is ordered that Carl F. Farbach, Esq., General Counsel for the United States Maritime Commission, be and he is hereby admitted to practice as an attorney, counsellor, solicitor, proctor and advocate of this Court only for the purpose of prosecuting these two cases, and thereupon said Carl F. Farbach, Esq., took the oath of attorneys as prescribed by the rules of this Court. Mr. Kilkenny, Mr. Jones, Mr. Geary and Mr. Farbach made statements to the Court. Mr. Kilkenny introduced in evidence certified copies of orders, [fol. 84] etc., re Docket No. 555, United States Maritime

Commission, which were marked Petitioners' Exhibit No. 1. Mr. Kilkenny introduced in evidence eleven volumes consisting of 1904 pages of transcript of proceedings Re Docket No. 555, United States Maritime Commission, which were marked Petitioners' Exhibit No. 2. All of the parties having stipulated that all exhibits introduced before the United States Maritime Commission, Mr. Kilkenny introduced in evidence 172 original exhibits introduced on the hearing re Docket No. 555, United States Maritime Commission, which said exhibits were marked Petitioners' Exhibit No. 3. Thereupon all parties hereto stipulated that Exhibit No. 3 may be duplicated under the direction of the Clerk of this Court, and that when the duplicates are so prepared they shall be substituted in evidence for the original exhibits and that the original exhibits shall then be returned to Carl F. Farbach, Esq., General Counsel for the United States Maritime Commission. Further ordered that the expenses for preparing duplicates of Petitioners' Exhibit No. 3 shall be paid for by the State of California and the City of Oakland. By consent it is ordered that the petition of the State of California et al. be amended on the face thereof by inserting after the word "is" in the fifth line of Paragraph I, page 2 of the complaint, the words "and at all times mentioned herein was". It was further stipulated between the petitioners and the United States Maritime Commission that the form of the motion to dismiss which is mentioned in Paragraph IV on page 4 of the petition is incorrectly stated there, and that the correct form of the motion is as shown in Exhibit A of the answer of the United States of America and the United States Maritime Commision. After hearing the attorneys for the respective parties, it is ordered that each of the petitioners have twenty (20) days within which to file their opening briefs herein, that the defendants and interveners each have twenty (20) days to file their briefs herein, and that each of the peti-
[fol. 85] tioners have fifteen (15) days within which to file their briefs in reply.

Further ordered that the further trial hereof be continued to April 27, 1942. On motion of Mr. Jones and by consent of all the attorneys for the respective parties hereto, it is ordered that the interlocutory injunction heretofore issued herein remain in full force and effect until the further order of the Court.

[fol. 86] IN UNITED STATES DISTRICT COURT

[Title omitted]

MINUTE ENTRY OF TRIAL—May 21, 1942

These two (2) causes heretofore consolidated for trial came on this day for further trial; Lucas E. Kilkenny, Esq., Deputy Attorney General of the State of California appeared as attorney for the State of California and Board of Harbor Commissioners for San Francisco Harbor; W. Reginald Jones, Esq., Port Attorney, appeared as attorney for the City of Oakland, etc.; Carl F. Farbach, Esq., Special Counsel for the United States Maritime Commission, and Miss Esther B. Phillips, Assistant United States Attorney, appeared as attorneys for the defendants; Joseph A. Geary, Esq., appeared as attorney for Encinal Terminals, an Intervenor; R. D. Mackenzie, Esq., appeared as attorney for Howard Terminals, an Intervenor; and F. C. Hutchens, Esq., appeared as attorney for Parr-Richmond Terminal Corporation, an Intervenor. After argument by Mr. Farbach, Mr. Kilkenny and Mr. Jones, it is ordered that these two (2) cases be and the same are hereby submitted to the Court for consideration and decision.

[fol. 87] In District Court of the United States for the Northern District of California, Southern Division

No. 22000-R

State of California and Board of State Harbor Commissioners for San Francisco Harbor, Petitioners,

vs.

United States of America and United States Maritime Commission, Defendants

No. 22002-L

City of Oakland, a Municipal Corporation, Acting by and though its Board of Port Commissioners, Petitioner,

vs.

United States of America and United States Maritime Commission, Defendants

Before: Healy, Circuit Judge; St. Sure and Roche, District Judges

Opinion—Filed Aug. 20, 1942

Healy, Circuit Judge:

Following its investigation of certain practices of the petitioners and eighteen other terminals in the San Francisco Bay area, the United States Maritime Commission made an order which the petitioners here seek to enjoin.[1] [fol. 88] Petitioners' suits have been consolidated, and a three-judge court assembled pursuant to 28 U. S. C. A. § 47.

The Maritime Commission's hearing was conducted before a trial examiner who made recommendations later put into effect by the order. The Commission found that there is a lack of uniformity in the rules and practices of the terminals in the Bay area in regard to free-time allowance, and that the manner in which they are applied affords opportunity for unequal treatment of shippers; also, that

[1] The Commission's order is reported in 2 U. S. M. C. 588. Petitioners' suits are brought pursuant to 46 U. S. C. A. § 830 and 28 U. S. C. A. § 46.

such rules and practices are unduly prejudicial and preferential in violation of § 16, and unreasonable in violation of § 17 of the Shipping Act, 1916, as amended.[2] It found further that the regulations and practices in respect of demurrage and storage charges are lacking in uniformity, and that, as a whole, the terminals are furnishing wharf storage services at non-compensatory rates, resulting in the unequal treatment of users and nonusers of such services; likewise, that these rules and practices are in violation of §§ 16 and 17 of the Act.

[fol. 89] As defined by the Commission, free time is the period allowed for the assembling of cargo upon, or its removal from the wharves. Wharf demurrage is the charge accruing on cargo left in possession of the terminal beyond the free-time period. Demurrage is a penalty charge designed to force the cargo off the wharves and thereby clear them for other traffic. In lieu of demurrage, or upon the expiration of the demurrage period, a storage charge may be assessed at a lower rate. As a remedy for the existing abuses, the Commission prescribed a table of free-time periods, the terminals being ordered to abstain from allowing

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[2] Section 16, 46 U. S. C. A. § 815, provides in part: "It shall be unlawful for any common carrier by water, or other person subject to this chapter, either alone or in conjunction with any other person, directly or indirectly—

First. To make or give any undue or unreasonable preference or advantage to any particular person, locality, or description of traffic in any respect whatsoever, or to subject any particular person, locality, or description of traffic to any undue or unreasonable prejudice or disadvatnage in any respect whatsoever."

Section 17, 46 U. S. C. A. § 816, provides in part: "Every such carrier and every other person subject to this chapter shall establish, observe, and enforce just and reasonable regulations and practices relating to or connected with the receiving, handling, storing, or delivering of property. Whenever the board finds that any such regulation or practice is unjust or unreasonable it may determine, prescribe, and order enforced a just and reasonable regulation or practice.

longer periods than those prescribed.[3] As to demurrage and storage, it prescribed: (a) a penalty charge of 5¢ per ton per day upon cargo remaining beyond the free-time period and not declared for storage, with the further provision that when cargo is not declared for storage by the [fol. 90] fifth day it shall automatically go into storage; (b) a storage charge, varying with different commodities, and based on a fifteen-day period or fraction thereof; and (c) a handling charge, likewise varying with different commodities, to be assessed when cargo goes into storage. The terminals were ordered to abstain from assessing demurrage and storage charges at less than the prescribed rates, but the order was without prejudice to the establishment of higher rates when they were justified and it did not require the reduction of any higher rates then in effect. There was a further requirement that the terminals file with the Commission and keep open to public inspection schedules showing all the rates and charges for the furnishing of wharfage, dock, warehouse, or other terminal facilities in connection with a common carrier by water.

The rates and regulations imposed appear to be identical with those prescribed by the California State Railroad Commission for private terminals in the Bay area.[4] The latter order grew out of the State Commission's investigation, commenced in 1935, of the "chaotic" conditions prevailing in the terminals. The major problems, said the State body,

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[3] The table of prescribed free-time periods, exclusive of Sundays and holidays, is as follows:

	In-bound Days	Out-bound Days
Coastwise and Inland Waterway	5	5
Intercoastal	5	7
Foreign	7	7
Transshipment	10	10

This schedule is without prejudice to a longer period, not in excess of 21 days, on petroleum or products thereof, destined to trans-Pacific ports; and without prejudice to the establishment of reasonable rules and regulations in connection with free-time allowances.

[4] Decision No. 29,171, Case No. 4090, Railroad Commission of the State of California (1936).

were "the inadequacies of the revenues of the terminal operators, the diversion of tonnage through absorptions, and the existence of discriminatory rates between various [fols. 91-92] users of the services." A study of terminal operations and revenues was made by agents of the State Commission and the results were set out in a preliminary and a final report, referred to as the Edwards-Differding reports. Based upon their analysis of the cost of rendering the various services, and considering also such factors as competition between terminals and the ability of the traffic to pay, Edwards and Differding recommended the rates and regulations subsequently adopted. Their studies did not extend to the State and municipal terminals, since the State Commission has no jurisdiction over them; and, owing to competitive conditions, the State Commission's order was expressly conditioned upon the voluntary adoption of similar measures by the publicly owned terminals. It appears that all of the terminals, both public and private, have adopted the recommendations of the State Commission as to toll, dockage, and service charges, but not those relating to free time, demurrage, and storage. The Edwards-Differding reports were admitted as evidence in the proceeding before the Maritime Commission, and there was also testimony by Differding. It is conceded that these reports form the basis of the order here under attack.

Both petitioners are public agencies. The members of the Board of State Harbor Commissioners for San Francisco Harbor are appointed by the governor. The function of the Board is to provide the facilities for handling freight and passengers on the San Francisco waterfront. It con- [fol. 93] trols the piers and wharves, all of which are owned by the State, and it operates the Belt-Line terminal railroad. The board assigns pier space to the various steamship lines, giving them a preferential use of the piers, for which it charges a rental.[5] It also collects dockage on vessels and tolls on cargo, as well as demurrage and storage charges. All revenues from handling, loading, and accessorial services are collected and retained by the assignees. The Board is not authorized to engage in warehousing, nor is it authorized to make a profit from its

[5] Two of the piers are assigned to private operators, namely, Golden Gate Terminals and State Terminal Company.

operations. It is, however, required to collect sufficient revenue to enable it to perform its duties and pay the principal and interest on its bonds.[6]

Oakland, a municipal corporation, operates several terminals directly, and others it leases to private operators. The facilities are managed and the rates fixed by the Board of Port Commissioners of the Port of Oakland. Deficits in operation are made up by taxation.[6a]

1. Little attention need be given the first argument advanced by the petitioners, namely, that their terminal operations are sovereign or governmental in character, hence are constitutionally immune from Federal control. We do not inquire whether the functions performed are governmental or proprietary, for in either event they are subordinate to the power of Congress to regulate interstate com- [fol. 94] merce. United States v. California, 297 U. S. 175.[7] The petitioners contend that since they do not actually handle the cargo which passes through the terminals they are not engaged in "commerce." But their terminal activities bear immediately and substantially upon the flow of goods in interstate and foreign commerce, and if is immaterial that they are not themselves engaged in commerce, as such, or that their activities may be wholly intrastate, United States v. Darby, 312 U. S. 100, 118; United States v. Wrightwood Dairy Company, 315 U. S. 110, 121.

2. The provisions of §§ 16 and 17 of the Act apply to a common carrier by water or "other person subject to this chapter." The latter phrase is defined in § 1, 38 U. S. C. A. § 801, as meaning "any person not included in the term 'common carrier by water,' carrying on the business of forwarding or furnishing wharfage, dock, warehouse, or other terminal facilities in connection with a common carrier by water." The same section further states that "the term 'person' includes corporations, partnerships, and as-

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[6] Sections 3080 and 3084, Harbors and Navigation Code of California (1937).

[6a] Success of the terminal operations of Oakland is measured by the industrial development of the city.

[7] See also Parkersburg & Ohio River Transportation Company v. Parkersburg, 107 U. S. 691, 701; State of California v. Anglim, 9 Cir., — F. 2d —.

sociations, existing under or authorized by the laws of the United States, or any State, Territory, District, or possession thereof, or of any foreign country."

The major contention advanced appears to be that the Shipping Act of 1916 does not apply to the petitioners in that neither of them is a "person" as that term is defined [fol. 95] in the Act. Various reasons are marshaled in support of the contention. It is said that since Congress was at pains to specify the particular entities embraced by the term "person," it must have intended to exclude those not mentioned; that it is a canon of construction that a sovereign is presumptively not bound by its own statute unless specifically named in it; that petitioners are not to be classed as "other persons" subject to the Act for the reason that they are not "carrying on the business of forwarding or furnishing wharfage, dock, warehouse, or other terminal facilities in connection with a common carrier by water," more specifically, that they are not carrying on a business, and that, assuming they are, it is not in connection with a common carrier by water.

It is plain that the statutory enumeration of the entities falling within the term "person" is not exclusive, and was not intended to be so. If it were otherwise, the curious result would follow that even an individual is not a "person" within the intendment of the Act. In Georgia v. Evans, — U. S. —, decided April 27, 1942, the court held that the term "person," as similarly defined in the Sherman Act, includes a state. The court observed that whether the word "person" or "corporation" includes a state "depends upon its legislative environment." Congress knew that a substantial proportion of the wharfinger service of the country is provided by public agencies. The salutary pur- [fol. 96] poses intended to be effected by the Shipping Act would largely be defeated if it were to be held that such agencies are outside the scope of the legislation, as witness the dilemma of the California State Railroad Commission in its attempt to deal with the terminal problem in the Bay area. Moreover, resort to the legislative history of the Act affords some evidence that it was the intent of Congress to make public terminals subject to regulation.[8] As to the

[8] During the discussions in the Committee of the Whole House on H. R. 15455, which later became the Shipping Act, reference was made to the fact that large sums of money

canon of construction relied on, the Supreme Court in United States v. California, supra, observed that "the presumption is an aid to consistent construction of the statutes of the enacting sovereign when their purpose is in doubt, but it does not require that the aim of the statute fairly to be inferred be disregarded because not explicitly stated." The State of California is not, incidentally, the enacting sovereign in this instance.

It would hardly be consonant with good sense to believe that the petitioners are not in the "business" of furnishing terminal facilities merely because, as is argued, the govern- [fol. 97] ing statute forbids or does not contemplate that they make a profit. The phrase "carrying on business" has not so narrow a connotation as that. Indeed, the State law is in disagreement with the contention insofar as it is made by the Board of State Harbor Commissioners. Section 1731 of the Harbors and Navigation Code of California (1937) provides that the president of the Board "shall supervise the conduct of the dock system, the State Belt Railway and all other departments of the harbor business." And see Denning v. State, 123 California 316, 321, in which the California Supreme Court observed that the Board is authorized to conduct the "business of wharfinger." It is equally plain that the business of petitioners is conducted "in connection with a common carrier by water." It is inadmissible to suppose that this phrase limits the definition of "other persons" to those whose operations form part of the act of water transportaion, for the result would follow that no persons are affected other than common carriers by water. We need not labor the point. The statutory verbiage seems clear enough as it stands. The petitioners

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had been invested in municipal docks by such cities as New York, Seattle, San Francisco, and Los Angeles, and the question was asked whether it was the intention of the bill to take away the control of these municipal wharves from the cities which had constructed them. To this question the chairman of the Committee on the Merchant Marine and Fisheries (the committee in charge of the bill) made the following reply: "Not at all; only to prevent unjust discrimination between shippers. If they do exercise such discrimination, there is no reason why they should not be amenable to the law as well as a private person." 53 Cong. Rec. 8276.

are plainly within the definition of those furnishing terminal facilities in connection with common carriers by water.

3. We turn to the contention that the order exceeds the authority conferred upon the Commission by §§ 16 and 17.

The order, insofar as it relates to free time, is clearly valid. The allowance of free time is a "regulation or prac- [fol. 98] tice" within the contemplation of § 17, and the petitioners do not attack as unreasonable the maximum free-time periods fixed. The periods prescribed are substantially the same as those already in effect on the San Francisco waterfront; and Oakland's assistant port manager testified that they are reasonable and proper. All parties agree that the question of free time is tied in with the need to keep the transit sheds clear for the purpose of cargo movement. Moreover, lack of uniformity in the practices of particular terminals in regard to extensions of the free-time period results in the giving of undue preferences and advantages, in violation of § 16.[8a]

But the power of the Commission to establish minimum wharfage rates stands on a somewhat different footing. The Commission disavows authority to fix the rates of the petitioners. What it does lay claim to is the authority and the responsibility of preventing discriminatory and unreasonable practices, and it says that it is "not to be deterred by the incidental effect of its action upon rates." In a sense, the whole problem may be said to grow out of the uncontrolled practices regarding free time. There can be no question but that the furnishing of storage at nominal rates, [fol. 99] upon the expiration of the free-time period, amounts substantially to an extension of the free time.[8b]

[8a] In its findings the Commission states: "Under the stress of competition, most of the larger terminals, in cases of emergencies, extend the free time either to cover the additional number of days of delay to the vessel, or, in the case of Oakland, to such number of days as 'is warranted and equitable in each individual case,' according to the judgment of the Port Manager."

[8b] The Commission found that, while the demurrage rates of the San Francisco Board are designed to and do, accomplish the purpose of clearing the piers for intransit cargo, nevertheless, in order to be competitive, the Board provides a lower "bulkhead" storage rate for cargo not occupying essential transit space.

The difference is merely one of degree. It is difficult to see how the discriminatory and unreasonable practices found to be existent can be corrected unless the terminals are ordered to put a platform beneath the charges imposed where goods are left beyond the free-time period. Cf. Merchants Warehouse Co. v. United States, 283 U. S. 501, 513. The rates, approved, it should be remembered, were expressly found to be not in excess of cost.

Under § 16, the Commission has power to prevent discrimination between shippers "in any respect whatsoever," and this power has been held to extend to matters of rate discrimination. Compagnie Generale Transatlantique v. American Tobacco Co., 2 Cir., 31 F. 2d 663, 666, cert. denied 280 U. S. 555; Booth SS Co. v. United States (D. C. N. Y.), 29 F. Supp. 221. But the present order does not stop with the requirement that all shippers who leave their goods on the wharves beyond free time shall be charged demurrage and storage at uniform rates; it goes further and prescribes the level below which those rates are not to fall. The discrimination said to justify the order is not between shippers who avail themselves of the storage services; it is between the users and nonusers of the service. As the report of the Commission states "the users of the wharf [fol. 100] storage services are not providing their proper share of essential terminal revenues," and "a disproportionate share of this burden is being passed to users of other terminal services." The Commission further observed that "the practice of furnishing one service below cost has the tendency to prevent any downward revision of rates for other services however justified they may be."

Section 16 of the Shipping Act is substantially identical with § 3(1) of the Interstate Commerce Act,[9] 49 U. S. C. A. § 3(1), which has been held applicable to rate discrimination of the same character as that involved here. In Ex Parte No. 104, Part VI, Warehousing and Storage of Property by Carriers at the Port of New York, 198 I. C. C. 134, 216 I. C. C. 291, and 220 I. C. C. 102, the Interstate Commerce Commission held that the practice of certain railroads in furnishing storage to shippers at non-compensatory rates results in undue prejudice to those shippers whose commercial practices do not permit of their placing

[9] Cf. United States v. Tozer, 29 F. 904, 906.

their goods in storage, but require direct shipment from shipside to destination. The prejudice was found to extend to "all persons who are compelled to bear the carrier's transportation rates which are dissipated by their storage practices." 216 I. C. C. 291, 351. This administrative decision, involving § 3(1) of the Interstate Commerce Act, was upheld in Baltimore & Ohio Railroad Company v. United States, 305 U. S. 507, substantially on the grounds advanced by the Interstate Commerce Commis- [fol. 101] sion. While the case involved other sections of the Act as well as § 3(1), the holding appears to be that the former section, standing alone, would support the Commission's order. The important matter to be noted is that the discrimination discussed by the Supreme Court did not result from the failure of the railroads to treat all shippers alike, but from the fact that certain shippers were not in a position to take advantage of the non-compensatory warehousing service.

While we have considered we have not discussed all the arguments made by the petitioners in respect of the point, and we think it unnecessary to do so. For reasons already given we are of opinion that the order of the Commission in respect of minimum wharfage charges has support in § 16 of the Shipping Act, if not in § 17.

4. The Edwards-Differding studies did not extend to the petitioners' operations, but the record supports the inference that the petitioners' costs were not substantially less than the costs of other terminals in the Bay area. The studies did include the Howard, Encinal, and Parr-Richmond terminals in the East Bay area, as well as the two privately operated piers on the San Francisco Waterfront, namely, Golden Gate Terminals and State Terminal Company. The rates recommended by the experts and adopted by the Commission were based on the lowest unit costs, both fixed and operating, of the terminals studied; and there is testimony that such costs have increased since the investigation. Under these circumstances, and in view of petitioners' failure to introduce any evidence tending to show [fol. 102] that their costs were lower than those prevailing at the other terminals, we think the Commission was justified in concluding that the minimum rates prescribed were not above the petitioners' cost of rendering the service.

Oakland complains that the Commission should have considered only the out-of-pocket expenses incident to the rendition of the service, and should not have included, as it did, the fixed cost of providing floor space. But we believe that the determination of the proper cost basis should be left to the discretion of the Commission. Certainly we can not say that the formula adopted by it is unreasonable. Cf. Swayne & Hoyt Ltd. v. United States, 300 U. S. 297, 304; Virginia Ry. Company v. United States, 272 U. S. 658, 663.

5. The Board claims that the order is in conflict with § 9, Article I, of the Constitution, which provides that "no preference shall be given by any regulation of commerce or revenue to the ports of one state over those of another." Since the rates in certain of the Pacific Northwest ports are somewhat lower than those prescribed for the Bay area terminals, the order is said to bestow an unlawful preference on those ports. We note again, in passing, that the Maritime Commission's order is substantially identical with the order of the State's own regulatory body. Moreover, the conditions in the other ports are not shown to be the same. It is enough to say that the order does not affect the rates and practices of any terminal outside the [fol. 103] Bay area. As said in Pennsylvania v. Wheeling & Belmont Bridge, 18 Howard 421, 435, "what is forbidden is, not discrimination between individual ports within the same or different states, but discrimination between states." There is no discrimination of that character here.

Another contention is that the order is invalid for the reason that it gives an undue preference or advantage to the Northwest as a "locality," within the phraseology of § 16 of the Shipping Act. But the statute obviously refers to discrimination between shippers. The rates and regulations prescribed by the order are uniformly applicable to all localities which seek the use of petitioners' terminal facilities.

We find that the Maritime Commission had lawful authority to make its regulatory order, and that the same is valid. It is therefore ordered that petitioners' motion for a permanent injunction be denied and the proceedings dismissed, upon preparation of findings of fact and conclusions of law. Petitioners will pay costs.

William Healy, United States Circuit Judge; A. F. St. Sure, United States District Judge; Michael J. Roche, United States District Judge.

[fol. 104] In District Court of the United States

No. 22000-R, No. 22002-L

[Title omitted]

Exceptions and Objections and Proposed Amendments to Defendants' Proposed Findings of Fact and Conclusions of Law—Filed November 7, 1942

[fol. 105] Come now petitioners State of California and Board of State Harbor Commissioners for San Francisco Harbor, said Board being hereinafter referred to as "the Harbor Board", by their attorneys, Earl Warren, Attorney General of the State of California, and Lucas E. Kilkenny, Deputy Attorney General of said State, and except and object to and propose the following amendments to defendants' proposed findings of fact and conclusions of law, heretofore lodged with the Clerk of this Court, the references in said amendments being to proposed findings of fact and conclusions of law by numbers and pages as follows:

I

Strike out introductory paragraphs one and two, consisting of the last three lines on page 1 and the first twenty lines on page 2 of said proposed findings of fact and conclusions of law, to which said petitioners hereby except, and substitute therefor the following:

"This cause came on regularly for hearing on the 26th day of February, 1942, before the above entitled Court, consisting of the Honorable William Healy, Circuit Judge, and the Honorable A. F. St. Sure and the Honorable Michael J. Roche, District Judges, Earl Warren, Attorney General of the State of California, and Lucas E. Kilkenny, Deputy Attorney General, appearing for petitioners State of California and Board of State Harbor Commissioners for San Francisco Harbor, and Frank J. Hennessy, United States Attorney, and Esther B. Phillips, Assistant United States Attorney, and Carl F. Farbach, General Counsel, United States Maritime Commission, appearing for defendants, and documentary evidence consisting of a certified copy of the record before the United [fol. 106] States Maritime Commission, Docket No.

555 on the records of said Commission, was offered and received in evidence, and the matter was argued and submitted for decision, and the Court being fully advised in the premises, now makes the following

Findings of Fact

I

The above entitled proceedings was and is brought pursuant to Section 31 of the Shipping Act, 1915, as amended (39 Stat. 738, c. 451, Sec. 31; 46 U. S. Code, Sec. 830), 28 U. S. Code, Sec. 41, subd. (28), and Title 28, U. S. Code, Secs. 43-48, inclusive, to enjoin, set aside, annul and suspend, so far as it relates to the above named petitioners, a certain affirmative order of defendant United States Maritime Commission made and entered on the 11th day of September, 1941, in a proceeding before said Commission designated "In the Matter of Services, Rates, Charges, Tolls, Rentals, Rules, Regulations, Classifications, Agreements, Acts, Practices, and Operations of the San Francisco Bay Area Terminals Named Herein" and numbered 555 on the Docket of said Commission, requiring the above named petitioners (among others) to cease and desist from allowing greater periods of free time than those prescribed by said order, and from publishing, demanding or collecting wharf, demurrage and storage rates less than the minimum rates found by said Com-
[fol. 107] mission in said order to be reasonable, and requiring said petitioners (among others) to file with the Commission and to keep open to public inspection schedules and charges for the furnishing of wharfage, dock, warehouse or other terminal facilities in connection with a common carrier by water."

II

Strike out in their entirety proposed findings of fact numbered I, III, V to XV, inclusive, pages 2-5, and XVII, page 6, of said proposed findings of fact, to each of which said petitioners hereby except, and substitute therefor the following findings of fact to be numbered and worded as follows:

"II

The State of California, one of the above named petitioners herein, is and at all times mentioned in the above entitled proceeding was one of the States of the United States of America, and the Board of State Harbor Commissioners for San Francisco Harbor, one of the above named petitioners herein, hereinafter referred to as the Harbor Board, is and at all of said times was a duly constituted agency of the state government of said State of California performing certain functions and having certain powers in behalf of said State in respect of San Francisco Harbor, including the activities of the State referred to in the aforesaid proceeding before the United States Maritime Commission (hereinafter called "the Commission").

III

Defendant Commission is an administrative body [fol. 108] created by the Merchant Marine Act, 1936, and the affirmative order of said Commission hereinafter mentioned was made in a proceeding instituted by the Commission, the matter involved in such proceeding arising within the Northern District of California, Southern Division.

IV

All of the allegations contained in Paragraphs III and IV of the petition of said petitioners are true excepting that the "Special Appearance and Motion to Dismiss as to Respondents Board of State Harbor Commissioners for San Francisco Harbor and the State of California", referred to in said Paragraph IV, was in words and figures as alleged in Paragraph IV of the answer of said defendants and as set forth in a copy of said special appearance and motion, marked Exhibit "A" and attached to said answer.

V

At all times mentioned in said petition and in the proceedings before the Commission referred to in Paragraph I of these findings of fact, petitioner State of California, acting by and through petitioner Harbor Board, in the construction, maintenance and administration of San Francisco Harbor, was engaged and

now is engaged in the performance of purely governmental functions and at all of said times was not and now is not engaged in any kind of business whatsoever, and there was no evidence to the contrary at the hearing in said proceeding before the Commission.

[fol. 109]

VI

There was no evidence at said hearing before the Commission that either of the above named petitioners was at any of the times mentioned or inquired into at said hearing or is now carrying on the business of furnishing wharfage, dock, warehouse or other terminal facilities in connection with a common carrier by water, or otherwise, or that either of said petitioners was at any of said times or now is carrying on any business whatsoever.

VII

The Congress of the United States has and had no power to authorize the United States Maritime Commission to regulate either of the said petitioners in the exercise of any of the powers vested in the Harbor Board, or in making or adopting or enforcing regulations as to the amount of free time to be allowed for the assembling of cargo upon, or its removal from, the wharves and piers of petitioner State of California, or in the matter of giving notice of tariff charges, or of fixing and collecting wharf demurrage or storage charges on cargo left upon said wharves and piers beyond the free time allowed, or in regulating any of the practices or activities whatsoever of either of said petitioners in relation to the said wharves and piers of petitioner State of California on the San Francisco waterfront or in San Francisco Harbor.

[fol. 110]

VIII

The Shipping Act of 1916, as amended, does not by its terms purport to apply and does not apply to petitioner State of California or petitioner Board of State Harbor Commissioners for San Francisco Harbor.

IX

Neither of said petitioners herein is an "other person subject to this act" within the meaning of Section 1 of the Shipping Act of 1916, as amended.

X

The activities of said petitioners and each of them affected by said order of the Commission do not bear immediately and/or substantially upon the flow of goods in interstate and foreign commerce through the Harbor of San Francisco or otherwise.

XI

Neither of said petitioners has at any time failed to give reasonable notice of changes in rates for the services and facilities furnished by them.

XII

Any notice of change in rates for services and facilities given by said petitioners or any failure to give notice of such changes is not an unreasonable practice within the meaning of Section 17 of the Shipping Act of 1916, as amended.

XIII

The respective periods of free time set forth in Table I of the order and report of the Commission are [fol. 111] unreasonable and improper.

XIV

The rules, regulations and practices of the said petitioners and each of them with respect to free time, insofar as they permit free time allowances greater than those set forth in the above mentioned Table I, exclusive of Sundays and holidays, are not unduly preferential and prejudicial within the meaning of Section 16 of the Shipping Act of 1916, as amended, and are not unreasonable regulations and practices within the meaning of Section 17 of said act.

XV

Any lack of uniformity in the free time rules, regulations and practices of the petitioners in the above entitled proceeding and/or of the respondents in said proceeding before the Commission and/or in the application thereof and/or in the manner in which they are

applied does not discriminate between or give unequal treatment to shippers; and said rules, regulations and practices are not in this or any other respect unduly prejudicial or preferential within the meaning of Section 16 of the Shipping Act, 1916, as amended, and are not unreasonable regulations and practices within the meaning of Section 17 of said act.

XVI

The rates, rules, regulations and/or practices of petitioners above named and/or of the respondents in the above mentioned proceeding before said Commission relating to wharf demurrage and wharf storage [fol. 112] are not, by reason of lack of uniformity or otherwise, unduly preferential and/or prejudicial within the meaning of Section 16 of the Shipping Act, 1916, as amended, and/or unreasonable regulations and practices within the meaning of Section 17 of said act.

XVII

There was no evidence that, at any of the times referred to in the said hearing before the Commission, the rates of petitioners above named were producing revenues which were or are substantially less than the cost of the service and/or that said rates were or are not compensatory.

XVIII

The rates of the above named petitioners for wharf demurrage and wharf storage services at all of the times referred to in the said proceeding before said Commission produced revenues which were sufficient to pay the cost of the service, and such rates were and are compensatory.

XIX

There was no evidence at said hearing before the Commission that the rates for wharf demurrage and wharf storage service of the above named petitioners were such that users of such service were at any time not providing their proper share of essential terminal revenues; and there was no evidence at said hearing that the granting of such rates by said petitioners

resulted in a disproportionate share of the burden of providing such revenues being shifted to users of other [fol. 113] terminal service and/or in unequal treatment of users and non-users of wharf storage and wharf demurrage services.

XX

As a result of the rates of the above named petitioners for wharf demurrage and wharf storage services, users of such services have been providing their proper share of essential terminal revenues; and the granting of such rates by said petitioners has not resulted in a disproportionate share of the burden of providing such revenues being shifted to users of other terminal services and/or in unequal treatment of users and non-users of wharf storage and wharf demurrage services.

XXI

The granting of wharf storage and wharf demurrage services at non-compensatory rates is not unduly preferential or prejudicial within the meaning of Section 16 of the Shipping Act, 1916, as amended, and is not an unreasonable practice within the meaning of Section 17 of said act.

XXII

There was no evidence at said hearing before the Commission that the respective minimum rates for wharf demurrage and wharf storage prescribed by the Commission in its order are not in excess of the cost of the service to the above named petitioners or either of them.

XXIII

The said affirmative order of said Commission is [fol. 114] void and of no effect for the reason that it violates Section 9 of Article I of the United States Constitution in that it is a regulation of commerce which gives preference to the ports of the States of Washington and Oregon, to-wit, Seattle and Portland, over the San Francisco Harbor in two respects, namely, by prescribing higher wharf storage rates for the above named petitioners and said Harbor while permitting such other ports to mainfain lower rates than those

prescribed, and by prescribing a shorter free time period for the above named petitioners and said Harbor than is permitted to remain in effect in such other ports. Such other ports in the States of Washington and Oregon are in competition with said petitioners and Harbor in connection with the trans-Pacific and intercoastal trades.

XXIV

The above named petitioners, on the 17th day of October, 1941, filed with the United States Maritime Commission their petition for reconsideration of its said affirmative order of September 11, 1941, and said petition for reconsideration was denied by the Commission on or about the 24th day of October, 1941.

XXV

The evidence before the Commission at the said proceeding before it does not sustain the findings of the Commission as set forth in the report of the Commission in said proceeding (2 U. S. M. C. 586) or any of said findings."

[fol. 115] III

Strike out in their entirety said defendant's proposed conclusions of law numbered (1) to (8) and IX, inclusive, pages 6 and 7, to all of which said petitioners hereby except and object, and substitute therefor the following:

"As Conclusions of Law from the Foregoing Findings of Fact, the Court Concludes:

I

Neither of the above named petitioners is an "other person subject to this act" as defined in or within the meaning of Section 1 of the Shipping Act of 1916, as amended.

II

Neither of said petitioners is, or at any time mentioned in the above entitled proceeding was, subject to the power of Congress to regulate interstate and foreign commerce (Constitution, Art. I, Sec. 8, Cl. 3) in respect of the activities affected by the order of the Commission, or otherwise.

III

Neither of said petitioners is, or at any time mentioned in the above entitled proceeding was, subject to the jurisdiction of the United States Maritime Commission under the Shipping Act of 1916, as amended, in respect of the activities affected by the order of the Commission, or otherwise.

IV

The said affirmative order of the Commission given and made on September 11, 1941, in the proceeding numbered Docket 555 on its records and files is a regu- [fol. 116] lation of commerce which gives preference to the Port of Seattle in the State of Washington and the Port of Portland in the State of Oregon over the Harbor and Port of San Francisco in the State of California in the respects mentioned in Paragraph XIII of said petitioners' petition herein, in violation of Section 9 of Article I of the Constitution of the United States.

V

The Shipping Act of 1916, as amended, does not by its terms purport to apply and does not apply to petitioner State of California or petitioner Board of State Harbor Commissioners for San Francisco Harbor.

VI

The said order of the Commission in said proceeding is not sustained by the findings of the Commission nor by the evidence of record before the Commission in said proceeding before it.

VII

The Commission did not have any lawful authority to issue its said order in the said proceeding, and said order is invalid and unlawful in all respects and void as to the above named petitioners.

Said above named petitioners are entitled to a final decree in the above entitled proceeding ordering, adjudging and decreeing that the said affirmative order

[fol. 117] of the United States Maritime Commission dated September 11, 1941, is, and has at all times been, beyond the lawful authority of the said Commission and was and is wholly unlawful and void, and that the said affirmative order be perpetually set aside, suspended, cancelled and annulled and the enforcement thereof perpetually enjoined, insofar as it affects or relates to either of the above named petitioners.

It is ordered that a final decree be entered accordingly."

Wherefore, said petitioners pray that said exceptions and objections and said proposed amendments be allowed and approved.

Dated: November 7, 1942.

Respectfully submitted, Earl Warren, Attorney General of the State of California. Lucas E. Kilkenny, Deputy Attorney General, Attorneys for said Petitioners.

Due service and receipt of a copy of the within Exceptions and Objections and Proposed Amendments to Defendants' Proposed Findings of Fact and Conclusions of Law admitted this 7th day of November, 1942.

Frank J. Hennessy, United States Attorney. Esther B. Phillips, Assistant United States Attorney. Carl F. Farbach, Attorneys for Defendants.

Copy received 11/7/42.

LEK:H
11-6-42

[fol. 118] In District Court of the United States

[Title omitted]

No. 22000-R
No. 22002-L

Findings of Fact and Conclusions of Law—Filed November 16, 1942

This cause is brought pursuant to the provisions of Section 47, Title 28 U. S. C. A., and Section 830, Title 46 U. S. C. A., to enjoin, set aside, and annul an order of [fol. 119] the United States Maritime Commission, entered in a proceeding before said Commission entitled "In the Matter of Services, Rates, Charges, Tolls, Rentals, Rules, Regulations, Classifications, Agreements, Acts, Practices, and Operations of the San Francisco Bay Area Terminals Named Herein", being Docket No. 555 in the records of said Commission, requiring the petitioners (among others) to cease and desist from certain practices relating to or connected with the receiving, handling, storing and delivering of property, and found by said Commission to be unduly preferential and prejudicial and unreasonable, in violation of the Shipping Act, 1916, as amended, and prescribing and ordering enforced certain regulations and practices with respect thereto.

This cause came on regularly for hearing on the 26th day of February, 1942, before the above entitled Court, consisting of the Honorable William Healy, Circuit Judge, and the Honorable A. J. St. Sure and Michael J. Roche, District Judges, and documentary evidence, consisting of a certified copy of the record before the United States Maritime Commission in the aforesaid proceeding, was received, and the matter was argued and submitted. The Court being advised in the premises, now makes the following

Findings of Fact

I

The petitioner, the State of California, is one of the states of the United States, and the petitioner, Board of State Harbor Commissioners for San Francisco Harbor (herein called the "Harbor Board") is an agency of the State of

California, performing certain powers and functions in behalf of the State in respect of San Francisco Harbor, including the activities of the State referred to in the aforesaid proceeding before the United States Maritime Commission (herein called the "Commission").

II

The City of Oakland is a municipal corporation of the State of California.

[fol. 120]

III

The petitioners, the State of California and the Harbor Board, are and at all times referred to in the petition herein and in the aforesaid proceeding were, and each of them is and at all times referred to in the petitions herein and in said proceeding was, carrying on the business of furnishing wharfage, dock, warehouse, and other terminal facilities in connection with a common carrier by water as defined in the Shipping Act, 1916, as amended.

IV

The petitioner, the City of Oakland, is, and at all times referred to in the petition herein and in the aforesaid proceeding was, carrying on the business of furnishing wharfage, dock, warehouse, and other terminal facilities in connection with a common carrier by water as defined in the Shipping Act, 1916, as amended.

V

The activities of the petitioners, and each of them, affected by the order of the Commission, bear immediately and substantially upon the flow of goods in interstate and foreign commerce.

VI

The evidence before the Commission in the aforesaid proceeding, fully sustains the findings of the Commission, as set forth in the report of the Commission in said proceeding (2 U. S. M. C. 588).

VII

The petitioners herein have, and each of them has, failed to give reasonable notice of changes in rates for the services

and facilities furnished by them; and such failure to give adequate notice of tariff changes is an unreasonable practice within the meaning of Section 17 of the Shipping Act, 1916, as amended.

VIII

The respective periods of free time set forth in Table 1 in [fol. 121] the report of the Commission as follows:

	Inbound days	Outbound days
Coastwise and Inland Waterway	5	5
Intercoastal	5	7
Foreign	7	7
Transshipment	10	10

are reasonable and proper.

IX

The rules, regulations and practices of the petitioners, and each of them, with respect to free time, are, insofar as they permit free time allowance greater than those set forth in the aforesaid Table 1, exclusive of Sundays and holidays, unduly preferential and prejudicial within the meaning of the Section 16 of the Shipping Act, 1916, as amended, and unreasonable regulations and practices within the meaning of Section 17 of that Act.

X

There is lack of uniformity in the free time rules, regulations and practices of the petitioners and in the application thereof; and the manner in which they are applied affords opportunity to discriminate between, and for unequal treatment of, shippers. Said rules, regulations, and practices are in this respect unduly prejudicial and preferential within the meaning of Section 16 of the Shipping Act, 1916, as amended, and unreasonable regulation and practices within the meaning of Section 17 of that Act.

XI

The rates, rules, regulations, and practices of the petitioners, and each of them, relating to wharf demurrage and wharf storage are lacking in uniformity. Said rates,

rules, regulations, and practices are in this respect unduly prejudicial and preferential within the meaning of Section 16 of the Shipping Act, 1916, as amended, and unreasonable regulations and practices within the meaning of Section 17 of that Act.

[fol. 122]

XII

The rates of the petitioners for wharf demurrage and wharf storage services, at the times referred to in the aforesaid proceedings before the Commission, were producing revenues which are substantially less than the cost of the service, and are not compensatory.

XIII

As a result of the non-compensatory rates for wharf demurrage and wharf storage service, users of such service have not been providing their proper share of essential terminal revenues. The granting of wharf storage and wharf demurrage services at non-compensatory rates results in a disproportionate share of the burden of providing such revenues being shifted to users of other terminal services and in unequal treatment of users and non-users of wharf storage and wharf demurrage services.

XIV

The granting of wharf storage or wharf demurrage services at non-compensatory rates is unduly preferential and prejudicial within the meaning of Section 16 of the Shipping Act, 1916, as amended, and an unreasonable practice within the meaning of Section 17 of that Act.

XV

The respective minimum rates for wharf demurrage and wharf storage prescribed by the Commission in its order are not in excess of the cost of the service to the petitioners, or any of them.

XVI

The agreement between the City of Oakland and Howard Terminal, dated November 5, 1914, and the agreement between the City of Oakland and McCormick Steamship Company, dated March 1, 1932, are agreements controlling,

regulating, preventing and destroying competition and providing for an exclusive, preferential or co-operate working arrangement. Said agreements have not been approved by [fol. 123] the Commission; and the petitioner City of Oakland is and has been carrying out said agreements before (and without) approval thereof by the Commission.

XVII

No preference is given by the order of the Commission to any port over any other ports.

Conclusions of Law

(1) Each of the petitioners is an "other person subject to this Act," as defined in the Shipping Act, 1916, as amended.

(2) The petitioners are, and each of them is, subject to the power of Congress to regulate interstate and foreign commerce (Const., Art. I, Sec. 8, cl. 3), in respect of the activities affected by the order of the Commission.

(3) The petitioners are, and each of them is, subject to the jurisdiction of the United States Maritime Commission under the Shipping Act, 1916, as amended, in respect of the activities affected by the order of the Commission.

(4) The proceedings before the Commission and the rules of procedure governing those proceedings are in full accord with all the requirements of due process of law.

(5) No preference is given by the order of the Commission to the ports of one state over those of any other state.

(6) The agreement between the City of Oakland and Howard Terminal, dated November 5, 1914, and the agreement between the City of Oakland and McCormick Steamship Company, dated March 1, 1932, are within the purview of Section 15 of the Shipping Act, 1916, as amended, and are required by that Section to be filed with the Commission.

(7) The order of the Commission in the aforesaid proceeding is fully sustained by the findings of the Commission and by the evidence of record before the Commission in said proceeding.

(8) The Commission had lawful authority to issue its said order in the aforesaid proceeding, and said order is valid [fol. 124] and lawful in all respects.

IX

The petitioners' motion for a permanent injunction is denied and these proceedings are dismissed, petitioners to pay costs.

William Healy, United States Circuit Judge; A. F. St. Sure, United States District Judge; Michael J. Roche, United States District Judge.

[fol. 125] In District Court of the United States for the Northern District of California, Southern Division

No. 22000-R

State of California and Board of State Harbor Commissioners for San Francisco Harbor, Petitioners,

vs.

United States of America and United States Maritime Commission, Defendants

Final Decree—Filed December 1, 1942

The above-entitled matter came on regularly for hearing on the 26th day of February, 1942, before the above-entitled Court, the Honorable William Healy, United States Circuit Judge, the Honorable A. F. St. Sure and the Honorable Michael J. Roche, United States District Judges, sitting as a statutory three-judge Court, and it appearing that said cause had been consolidated for trial and hearing by order duly made, with case entitled "City of Oakland, a municipal corporation, acting by and through its Board of Port Commissioners, Petitioner, vs. United States of America and United States Maritime Commission, Defendants, Encinal Terminals, a corporation, Parr-Richmond Terminal, a corporation, and Howard Terminal, a corpora-[fol. 126] tion, Interveners, No. 22002-L." and documentary evidence having been received for the consideration of all matters appearing in the petition and bill for injunction herein of the above-named petitioner and the law and the facts having been orally argued, and briefs having been filed, and the case having been submitted, and the Court having made findings of fact and rendered conclusions of

law, and having determined that the orders of the United States Maritime Commission, referred to in the petition and bill for injunction herein, are fully sustained by the findings of the Commission, and by the evidence of record herein, and that said Maritime Commission had lawful authority to issue the orders complained of, and the Court having held that said orders are and were valid and lawful in all respects, it is hereby

Ordered, Adjudged and Decreed that the temporary injunction heretofore entered is hereby dissolved and that the motion for a permanent injunction is hereby denied, and that these proceedings are dismissed with costs in favor of the defendants as may be taxed.

Done in open court before this statutory three-judge Court, convened pursuant to Section 47, Title 28 United States Code.

Dated: December 1st, 1942.

William Healy, United States Circuit Judge; A. F. St. Sure, United States District Judge; Michael J. Roche, United States District Judge.

[fol. 126-a] IN DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF CALIFORNIA, SOUTHERN DIVISION

No. 22002-R

CITY OF OAKLAND, a Municipal Corporation, acting by and through its Board of Port Commissioners, Petitioner,

vs.

UNITED STATES OF AMERICA and UNITED STATES MARITIME COMMISSION, Defendants

ENCINAL TERMINALS, a Corporation, PARR-RICHMOND TERMINAL, a Corporation, and HOWARD TERMINAL, a Corporation, Interveners

FINAL DECREE—Filed December 1, 1942

The above-entitled matter came on regularly for hearing on the 26th day of February, 1942, before the above-entitled Court, the Honorable William Healy, United States Cir-

cuit Judge, the Honorable A. F. St. Sure and the Honorable Michael J. Roche, United States District Judges, sitting as a statutory three-judge court, and it appearing that said cause had been consolidated for trial and hearing by order duly made, with case entitled "State of California and Board of State Harbor Commissioners for San Francisco Harbor, Petitioners, vs. United States of America and United States Maritime Commission, Defendants, No. [fol. 126-b] 22000-R" and documentary evidence having been received for the consideration of all matters appearing in the petition and bill for injunction herein of the above-named petitioner and the law and the facts having been orally argued, and briefs having been filed, and the case having been submitted, and the Court having made findings of fact and rendered conclusions of law, and having determined that the orders of the United States Maritime Commission, referred to in the petition and bill for injunction herein, are fully sustained by the findings of the Commission, and by the evidence of record herein, and that said Maritime Commission had lawful authority to issue the orders complained of, and the Court having held that said orders are and were valid and lawful in all respects, it is hereby

Ordered, Adjudged and Decreed that the temporary injunction heretofore entered is hereby dissolved and that the motion for a permanent injunction is hereby denied, and that these proceedings are dismissed with costs in favor of the defendants as may be taxed.

Done in open court before this statutory three-judge Court, convened pursuant to Section 47, Title 28 United States Code.

Dated: December 1st, 1942.

William Healy, United States Circuit Judge; A. F. St. Sure, United States District Judge; Michael J. Roche, United States District Judge.

[fol. 127] In District Court of the United States

No. 22000-R

[Title omitted]

Petition for Appeal, Assignment of Errors, and Prayer for Reversal—Filed December 31, 1942

This is a suit to annul and enjoin an order of the United States Maritime Commission seeking to regulate under the Shipping Act of 1916, as amended, wharf demurrage and storage charges and free time on state owned and conducted wharves of appellants. The suit involves also the questions whether appellants are subject to said act and whether Congress had power to enact it. A statutory three-judge court constituted pursuant to section 47, Title 28, and section 830, Title 46, United States Code, granted an interlocutory injunction and at a final hearing entered a final decree denying relief and dismissing the petition.

Considering themselves aggrieved by the final judgment and decree of the District Court of the United States for the Northern Disfriet of California, Southern Division, specially constituted and convened pursuant to the provisions of section 47 of Title 28, United States Code, and Section 830 of Title 46, United States Code, in the above [fol. 128] entitled cause, the petitioners herein, State of California and Board of State Harbor Commissioners for San Francisco Harbor, hereby pray that an appeal be allowed from said final judgment and decree to the Supreme Court of the United States and for an order fixing the amount of the cost bond on appeal therein.

Assignment of Errors

Said petitioners herein assign the following errors in the record and proceedings in said case:

The District Court of the United States for the Northern District of California, Southern Division, erred in the following particulars:

1. The Court erred in making and entering its final decree denying the permanent injunction applied and prayed for by petitioners above named, and in dismissing the proceedings in said case.

2. The Court erred in refusing to make and enter its decree vacating and annulling and permanently enjoining the order of the United States Maritime Commission issued and made on September 11, 1941.

3. The Court erred in finding and concluding that each of said petitioners is an "other person subject to this Act" as defined in the Shipping Act of 1916, as amended.

4. The Court erred in finding and concluding that said petitioners and each of them is subject to the power of Congress to regulate interstate and foreign commerce (Const., Art. I, Sec. 8, Cl. 3) in respect to the activities affected by the order of the Commission.

5. The Court erred in finding and concluding that said petitioners and each of them is subject to the jurisdiction of the United States Maritime Commission under the Shipping Act of 1916, as amended, in respect of the activities affected by the order of the said Commission of September 11, 1941.

[fol. 129] 6. The Court erred in finding and concluding that no preference is given by said order of the United States Maritime Commission to the ports of one State over those of any other State.

7. The Court erred in finding and concluding that the said order of the United States Maritime Commission in the proceeding in which it was made and issued was sustained by the findings of the said Commission and by the evidence of record before the said Commission in said proceeding.

8. The Court erred in finding that the rules, regulations and practices of said petitioners, and each of them, with respect to free time, are, insofar as they permit free time allowance greater than those set forth in its findings, exclusive of Sundays and holidays, unduly preferential and prejudicial within the meaning of Section 16 of the Shipping Act, 1916, as amended, and unreasonable regulations and practices within the meaning of Section 17 of that Act.

9. The Court erred in finding that the rates, rules, regulations and practices of said petitioners and each of them, because not uniform with those of the other respondents in the proceedings before said Commission in Docket 555,

are, in respect of such lack of uniformity, unduly prejudicial and preferential within the meaning of Section 16 of the Shipping Act of 1916, as amended, and unreasonable regulations and practices within the meaning of Section 17 of that Act.

10. The Court erred in finding that the rates of said petitioners for wharf demurrage and wharf storage services, at the time referred to in said proceedings before the Commission, were producing revenues which are substantially less than the cost of the service, and are not compensatory.

11. The Court erred in finding that the granting of wharf storage or wharf demurrage services at non-compensatory [fol. 130] rates is unduly preferential and prejudicial within the meaning of Section 16 of the Shipping Act of 1916, as amended, and an unreasonable practice within the meaning of Section 17 of that Act.

12. The Court erred in finding and concluding that said Commission had lawful authority to issue its said order in the proceeding before it in Docket 555 and that said order is valid and lawful in all respects.

13. The Court erred in not finding and concluding that the Shipping Act of 1916, as amended, does not by its terms purport to apply and does not apply to petitioner State of California or to petitioner Board of State Harbor Commissioners for San Francisco Harbor.

14. The Court erred in not finding that at all times mentioned in said petition and in the proceedings before the said Commission, petitioner State of California, acting by and through petitioner Harbor Board, in the construction, maintenance and administration of San Francisco Harbor, was engaged and now is engaged in the performance of purely governmental functions and at all of said times was not and now is not engaged in any kind of business whatsoever, and there was no evidence to the contrary at the hearing in said proceeding before the Commission.

15. The Court erred in not finding that there was no evidence at said hearing before the Commission that either of the above named petitioners was at any of the times mentioned or inquired into at said hearing or is now carry-

ing on the business of furnishing wharfage, dock, warehouse or other terminal facilities in connection with a common carrier by water, or otherwise, or that either of said petitioners was at any of said times or now is carrying on any business whatsoever.

[fol. 131] PRAYER FOR REVERSAL

For which errors petitioners and appellants, State of California and Board of State Harbor Commissioners for San Francisco Harbor, pray that the said final decree of the District Court of the United States for the Northern District of California, Southern Division, made and entered on December 1, 1942, in the above entitled cause, be reversed, and that said Court be ordered to enter a decree in favor of said petitioners and appellants, and for costs.

Dated: December 31, 1942.

Earl Warren, Attorney General, State of California;
Lucas E. Kilkenny, Deputy Attorney General.
Attorneys for said Petitioners and Appellants.

[fol. 132] IN DISTRICT COURT OF THE UNITED STATES

[Title omitted]

No. 22000-R

ORDER ALLOWING APPEAL AND FIXING AMOUNT OF COST BOND ON APPEAL—Filed December 31, 1942

The petitioners and appellants in the above entitled suit having prayed for the allowance of an appeal in this cause to the Supreme Court of the United States from the final decree made and entered in the above entitled suit by the District Court of the United States for the Northern District of California, Southern Division, on the 1st day of December, 1942, and from each and every part thereof, and having presented and filed their petition for appeal, as- [fol. 133] signment of errors, and prayer for reversal, pursuant to the statutes and rules of the United States in such case made and provided;

It is now here ordered that an appeal be, and the same is hereby, allowed to the Supreme Court of the United States

from the final decree of the District Court of the United States for the Northern District of California, Southern Division, made and entered on December 1, 1942, in the above entitled cause, as provided by law, and it is further ordered that the Clerk of said District Court shall prepare and certify a transcript of the record, proceedings and decree in this cause and transmit the same to the Supreme Court of the United States; so that he shall have the same in said Court within sixty (60) days of this date.

And it is further ordered that petitioners and appellants furnish a bond to secure costs on said appeal and that the amount of said bond be and hereby is fixed in the sum of $500.00 Five hundred dollars.

Dated: December 31, 1942.

William Healy, United States Circuit Judge; ——
——, United States District Judge, —— ——,
United States District Judge.

[fols. 134-174] Citation in usual form showing service on Charles Fahy, et al., omitted in printing.

[fols. 175-179] Bond on appeal for $500.00 approved and filed Dec. 31, 1942, omitted in printing.

[fol. 180] IN DISTRICT COURT OF THE UNITED STATES

No. 22000-R

[Title omitted]

STIPULATION AND ORDER AS TO RECORD ON APPEAL—Filed February 17, 1943

It is hereby stipulated by and between petitioners and appellants above named, and defendants and appellees and interveners and appellees above named, that there shall be included and incorporated in the transcript of record in this cause on appeal to the United States Supreme Court the following papers, documents, testimony and exhibits:

1. Petition and Bill for Injunction, and attached exhibits.
2. Order Consolidating Actions for Trial, Permitting Intervention and Granting Interlocutory Injunction.

[fol. 181] 3. Answer of the United States of America and United States Maritime Commission, and attached exhibits.

4. Order Permitting Encinal Terminals, a corporation, to Intervene and be treated as a Defendant.

5. Answer of Intervener Encinal Terminals.

6. Order Permitting Howard Terminal, a corporation, to intervene and be treated as a Defendant.

7. Answer of Intervener Howard Terminal.

8. Order Permitting Parr-Richmond Terminal Corporation, a corporation, to intervene and be treated as a Defendant.

9. Answer of Intervener Parr-Richmond Terminal Corporation.

10. Opinion of Statutory Three-Judge Court.

11. Findings of Fact and Conclusions of Law.

12. Exceptions and Objections and Proposed Amendments to Defendants' Proposed Findings of Fact and Conclusions of Law.

13. Final Decree of Statutory Three-Judge Court.

14. Petition for Appeal, Assignment of Errors, and Prayer for Reversal.

15. Order Allowing Appeal and Fixing Amount of Cost Bond on Appeal.

16. Citation with Proof of Service.

17. Statement as to Jurisdiction on Appeal.

18. Notices of Service of Documents on Appellees and Proof of Service.

19. Notice of Appeal to Defendants and Interveners with Proof of Service.

20. Acknowledgment of Attorney General of State of California of Notice of Appeal.

21. Bond upon Appeal.

22. Minutes of the Court of February 26, 1942, and May 21, 1942.

23. This Stipulation and Order as to Record on Appeal.

24. Clerk's Certificate.

[fol. 182] And it is further stipulated that, pursuant to Section 210, Judicial Code, and Title 28, Section 47a, United States Code, in addition to the papers and documents hereinabove stipulated to be included in the transcript of record on appeal in said cause, the original record of the proceedings had in the trial court in the above entitled cause before

the statutory three-judge court be transmitted by the Clerk of this court to the Clerk of the United States Supreme Court on this appeal, instead of a transcript thereof or of a narrative statement of evidence pursuant to Equity Rule 75, which said original record consists of the following papers, documents, testimony and exhibits introduced in evidence at the trial as follows: (1) Petitioners' Exhibit No. 1, consisting of certified copies of orders and other documents re Docket No. 555 before the United States Maritime Commission; (2) Petitioners' Exhibit No. 2, consisting of a certified copy of 1904 pages of testimony taken in the proceedings in Docket No. 555 before the United States Maritime Commission; (3) Petitioners' Exhibit No. 3, consisting of duplicate copies of one hundred seventy-two (172) original exhibits introduced at the hearings in Docket No. 555 before the United States Maritime Commission, which said duplicate copies of exhibits were substituted for the original exhibits, by order of the statutory three-judge court.

Dated: February 17, 1943.

Robert W. Kenny, Attorney General of the State of California; Lucas E. Kilkenny, Deputy Attorney General. Attorneys for Petitioners and Appel-[fol. 183] lants. Frank J. Hennessy, United States Attorney; Esther B. Phillips, Assistant United States Attorney; Carl F. Farbach, Special Counsel, United States Maritime Commission; Attorneys for United States of America, and United States Maritime Commission, Defendants and Appellees. Lillick, Geary, Olson & Charles, Ira S. Lillick, Joseph J. Geary, Attorneys for Encinal Terminals, Intervener and Appellee. Graham & Morse, Attorneys for Howard Terminal, Intervener and Appellee. Morrison, Hohfeld, Foerster, Shuman & Clark, F. C. Hutchens, Attorneys for Parr-Richmond Terminal Corporation, Intervener and Appellee.

[fol. 184] ORDER FOR TRANSMITTAL OF ORIGINAL RECORD AND EXHIBITS TO THE UNITED STATES SUPREME COURT, ON APPEAL

Whereas, the above entitled cause was consolidated for trial and was tried in this Court with the case entitled, City

of Oakland, a municipal corporation, acting by and through its Board of Port Commissioners, Petitioner, vs. United States of America and United States Maritime Commission, Defendants, Encinal Terminals, a corporation, Howard Terminal, a corporation, and Parr-Richmond Terminal Corporation, Interveners, No. 22002-L, and

Whereas, the same evidence was introduced and the same proceedings had, in all respects, in the trial of both of said causes; and said causes are of like nature and are relative to similar and closely related questions,

Now, Therefore, pursuant to Section 210, Judicial Code, and Title 28, Section 47a, United States Code, and in conformity with and pursuant to the foregoing stipulation,

It Is Ordered and Directed by the above entitled Court, acting and sitting as a Statutory Three-Judge Court, that, in addition to the papers and documents specified and enumerated in Items 1 to 24, inclusive, of the foregoing stipulation, the original record of the proceedings at the trial of the above entitled cause before this Court on February 26, 1942, and May 21, 1942, be transmitted by the Clerk of this Court to the United States Supreme Court instead of a transcript thereof or of a statement of evidence pursuant to Equity Rule 75, on appeal to said Court in said cause, which said original record of said proceedings consists of the papers, documents, testimony and exhibits specified and enumerated in the last paragraph of the foregoing stipulation, and

[fol. 185] It Is Further Ordered that the said original record of proceedings at said trial may likewise be transmitted and used on appeal to the United States Supreme Court in the case of City of Oakland, etc. vs. United States of America, et al., No. 22002-L, hereinabove mentioned.

Dated: February 17th, 1943.

William Healy, United States Circuit Judge; Michael J. Roche, United States District Judge; A. F. St. Sure, United States District Judge.

[fol. 186] In District Court of the United States.

No. 22002-L

[Title omitted]

Petition for Appeal, Assignment of Errors and Prayer for Reversal—Filed January 28, 1943

This is a suit to annul, enjoin and set aside an order of the United States Maritime Commission purporting to regulate under the Shipping Act, 1916, as amended, certain rates and practices of appellant on its municipally owned and operated wharves. It involves questions as to whether appellant is subject to said act and if Congress had power to subject appellant to such act. A statutory three-judge [fol. 187] court, constituted pursuant to Section 47, Title 28, and Section 830, Title 46, U. S. Code, granted an interlocutory injunction and at a final hearing entered a final decree denying a permanent injunction and dismissing appellant's petition and bill.

Considering itself aggrieved by such final judgment and decree, the petitioner herein hereby prays that an appeal be allowed from said final judgment and decree to the Supreme Court of the United States and for an order fixing the amount of the cost bond on appeal therein.

Assignment of Errors

Petitioner hereby assigns the following errors in the record and proceedings in said case.

The District Court of the United States for the Northern District of California, Southern Division, erred in the following particulars:

(1) The Court erred in making and entering its final decree denying the permanent injunction prayed for, and in dismissing the petition and bill;

(2) The Court erred in refusing to make and enter its decree annulling, setting aside and permanently enjoining the order of the United States Maritime Commission designated in said petition and bill;

(3) The Court erred in finding and concluding that this petitioner is subject to the power of Congress to regulate

interstate and foreign commerce in respect to the activities affected by said order of said Commission;

(4) The Court erred in finding and concluding that this petitioner is an "other person" as defined in the Shipping Act, 1916, as amended;

(5) The Court erred in finding that petitioner's rules, regulations and practices with respect to free-time were or [fol. 188] are unduly preferential and prejudicial within the meaning of Section 16 of the Shipping Act, 1916, or unreasonable regulations and practices within the meaning of Section 17 of said act;

(6) The Court erred in finding that the evidence before the Commission and the Court is insufficient to establish that petitioner's rates for wharf storage are unduly preferential or prejudicial within the meaning of Section 16 of the Shipping Act, 1916, as amended, or that they constitute an unreasonable regulation or practice within the meaning of Section 17 of said act in that the evidence establishes that such rates are greater than appellant's out-of-pocket costs incurred in connection with such service;

(7) The Court erred in finding that there was evidence to support the finding of the Commission that the minimum rates for wharf demurrage and wharf storage prescribed by the Commission are not in excess of the cost of the service to this petitioner, if by cost is meant out-of-pocket cost of such service;

(8) The Court erred in finding that the services performed by petitioner in connection with wharf storage and wharf demurrage are carried on in connection with a common carrier by water;

(9) The Court erred in finding that leases between this petitioner and its lessees are agreements subject to the provisions of Section 15 of the Shipping Act, 1916, as amended.

PRAYER FOR REVERSAL

For which errors petitioner prays that said final decree of the District Court of the United States for the Northern District of California, Southern Division, made and entered on December 1, 1942, in the above entitled cause, be re-

versed, and that said Court be ordered to enter a decree in favor of petitioner and appellant, and for costs.

Dated: January 28, 1943.

W. Reginald Jones, Port Attorney, Attorney for Petitioner and Appellant, City of Oakland.

[fol. 189] In the District Court of the United States

No. 22002-L

[Title omitted]

Order Allowing Appeal and Fixing Amount of Cost Bond on Appeal—Filed January 28, 1943

The Petitioner and Appellant in the above entitled suit having prayed for the allowance of an appeal in this cause to the Supreme Court of the United States from the final decree made and entered in the above entitled suit by the District Court of the United States for the Northern District of California, Southern Division, on the 1st day of [fols. 190-191] December, 1942, and from each and every part thereof, and having presented and filed its petition for appeal, assignment of errors, and prayer for reversal, pursuant to the statutes and rules of the United States in such case made and provided;

It Is Now Ordered that an appeal be, and the same is hereby, allowed to the Supreme Court of the United States from the final decree of the District Court of the United States for the Northern District of California, Southern Division, made and entered on December 1, 1942, in the above entitled cause, as provided by law, and it is further ordered that the Clerk of said District Court shall prepare and certify a transcript of the record, proceedings and decree in this cause and transmit the same to the Supreme Court of the United States, so that he shall have the same in said Court within sixty (60) days of this date.

And it is further ordered that petitioner and Appellant furnish a bond to secure costs on said appeal, and that the amount of said bond be and hereby is fixed in the sum of Five Hundred ($500.00) Dollars.

Dated: January 28, 1943.

William Healy, United States Circuit Judge.

[fols. 192-194] Citation in usual form omitted in printing.

[fol. 195] In District Court of the United States

No. 22002-L

[Title omitted]

Stipulation and Order as to Record on Appeal—Filed February 17, 1943

It Is Hereby Stipulated by and between Petitioner and Appellant above named and Defendants and Appellees and Interveners and Appellees above named that there shall be included and incorporated in the transcript of record in this cause on appeal to the United States Supreme Court the following papers, documents, testimony and exhibits:

1. Petition and Bill for Injunction and attached exhibit;
[fol. 196] 2. Order Consolidating Actions for Trial, Permitting Intervention, and Granting Interlocutory Injunction;
3. Answer of the United States of America and United States Maritime Commission and attached exhibit;
4. Order Permitting Encinal Terminals, a corporation, to Intervene and be Treated as a Defendant in the Above Entitled Proceedings;
5. Answer of Intervenor Encinal Terminals;
6. Order Permitting Howard Terminal, a corporation, to Intervene and be Treated as a Defendant in the Above Entitled Proceedings;
7. Answer of Intervenor Howard Terminal;
8. Order Permitting Parr-Richmond Terminal Corporation, a corporation, to Intervene and be Treated as a Defendant in the Above Entitled Proceedings;
9. Answer of Intervener Parr-Richmond Terminal Corporation;
10. Withdrawal of Attorney;
11. Opinion of statutory three-judge Court;
12. Findings of Fact and Conclusions of Law;
13. Final Decree;
14. Petition for Appeal, Assignment of Errors and Prayer for Reversal;
15. Order Allowing Appeal and Fixing Amount of Cost Bond on Appeal;

16. Citation on Appeal;
17. Statement as to Jurisdiction on Appeal;
18. Notice and receipt of service of documents on Solicitor General;
19. Notice and receipt of service of documents on other Appellees;
20. Notice of Appeal;
[fol. 197] 21. Copy of Bond for Costs on Appeal;
22. Minutes of the Court of February 26, 1942;
23. Minutes of the Court of May 21, 1942;
24. This Stipulation and Order;
25. Clerk's certificate.

And It Is Further Stipulated that pursuant to Section 210, Judicial Code, and Title 28, Section 47a, United States Code, in addition to the papers and documents hereinabove stipulated to be included in the transcript of record on appeal in said cause, the original record of the proceedings had in the trial Court in the above entitled cause before the statutory, three-judge Court be transmitted by the Clerk of this Court to the Clerk of the United States Supreme Court on this appeal instead of a transcript thereof or of a narrative statement of evidence pursuant to Equity Rule 75, which said original record consists of the following papers, documents, testimony and exhibits introduced in evidence at the trial as follows:

Petitioner's Exhibit No. 1, consisting of certified copies of orders and similar papers re Docket No. 555 before the United States Maritime Commission;

Petitioner's Exhibit No. 2, consisting of a certified copy of 1904 pages of testimony taken in the proceedings in Docket No. 555 before the United States Maritime Commission;

Petitioner's Exhibit No. 3, consisting of duplicate copies of one hundred seventy two (172) original exhibits introduced at the hearings in Docket No. 555 before the United States Maritime Commission, which said duplicate copies [fol. 198] of exhibits were substituted for the original exhibits by order of the statutory three-judge court.

Dated: February 17, 1943.

W. Reginald Jones, Port Attorney, Attorney for Petitioner and Appellant, City of Oakland; Frank J. Hennessy, United States Attorney; Esther B.

Phillips, Assistant United States Attorney, Attorneys for United States of America, Appellee. Carl F. Farbach, Special Counsel for United States Maritime Commission, Appellee. Lillick, Geary, Olson & Charles, Ira S. Lillick, Joseph J. Geary, Attorneys for Encinal Terminals, Appellee. Graham & Morse, Attorneys for Howard Terminal, Appellee. Morrison, Hohfeld, Foerster, Shuman & Clark, F. C. Hutchens, Attorneys for Parr-Richmond Terminal Corporation, Appellee.

ORDER FOR TRANSMITTAL OF ORIGINAL RECORD AND EXHIBITS TO THE UNITED STATES SUPREME COURT ON APPEAL

Whereas, the above entitled cause was consolidated for trial and was tried in this Court with the case entitled "State of California and Board of State Harbor Commissioners for San Francisco Harbor, Petitioners, vs. United [fol. 199] States of America and United States Maritime Commission, Defendants, Encinal Terminals, Howard Terminal and Parr-Richmond Terminal Corporation, Interveners", and numbered 22000-R in the records of this Court; and

Whereas, the same evidence was introduced and the same proceedings had in all respects in the trial of both of said causes, and said causes are of like nature and are relative to similar and closely related questions; now, therefore, pursuant to Section 210, Judicial Code, and Title 28, Section 47a, United States Code, and in conformity with and pursuant to the foregoing Stipulation, it is hereby

Ordered and Directed by the above entitled Court, acting and sitting as a statutory three-judge Court that, in addition to the papers and documents specified and enumerated in items 1 to 25 inclusive of the foregoing Stipulation, the original record of the proceedings at the trial of the above entitled cause before this Court on February 26, 1942 and May 21, 1942, be transmitted by the Clerk of this Court to the United States Supreme Court instead of a transcript thereof or of a statement of evidence pursuant to Equity Rule 75, on appeal to said Court in said cause, which said original record of said proceedings consists of the papers, documents, testimony and exhibits specified and enumer-

ated in the last paragraph of the foregoing stipulation; and it is further

Ordered that the said original record of proceedings at said trial likewise may be transmitted and used on appeal to the United States Supreme Court in the case of State of California and Board of State Harbor Commissioners for [fol. 200] San Francisco Harbor, Petitioners, vs. United States of America and United States Maritime Commission, Defendants, Encinal Terminals, Howard Terminal and Parr-Richmond Terminal Corporation, Interveners, and numbered 22000-R in the records of this Court.

Dated: February 17, 1943.

William Healy, United States Circuit Judge; Michael J. Roche, United States District Judge; A. F. St. Sure, United States District Judge.

[fols. 201-203] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 204] PETITIONERS' EXHIBIT No. 1

Secretary's Certificate to attached transcript omitted in printing.

[fol. 205] ORDER

At a Session of the United States Maritime Commission held at its office in Washington, D. C., on the 7th day of November, 1939, A. D.

No. 555

In the Matter of Services, Rates, Charges, Tolls, Rentals, Rules, Regulations, Classifications, Agreements, Acts, Practices, and Operations of the San Francisco Bay Area Terminals Named Herein.

It appearing, That each of the terminals named herein carry on the business of forwarding or furnishing wharfage, dock, warehouse, or other terminal facilities in connection with common carriers by water and, therefore, that

each of said terminals is an "other person subject to this Act" as defined in section 1 of the Shipping Act, 1916, as amended, and as used in sections 15, 16, 17, and 20 of the Shipping Act, 1916, as amended;

It further appearing, That all or some of the said terminals named herein, perform services, make rates, charges, tolls, rentals, rules, regulations, classifications, and agreements, and engage in acts and practices which are unfair, unreasonable, unjust or unduly prejudicial or preferential, or otherwise in violation of the law, in that all or some of said terminals:

1. Carry out agreements with common carriers by water, or with other persons subject to this Act, copies or memoranda of which have not been filed with the Commission, as required by section 15 of the Shipping Act, 1916, as amended;

2. By the controlled tonnage and purchasing power or economic influence of their parent companies, divert interstate or foreign waterborne cargo from its natural course, and make or give undue or unreasonable preference or advantage to particular persons, localities, or descriptions of traffic, or subject particular persons, localities, or descriptions of traffic to undue or unreasonable prejudice or disadvantage, in violation of section 16 of the Shipping Act, 1916, as amended;

3. Fail to establish, observe, and enforce just and reasonable regulations and practices relating to or connected with the receiving, storing, or delivery of property, as required by section 17 of the Shipping Act, 1916, as amended;

[fols. 206-207] 4. Receive or solicit confidential information from common carriers by water which may be used to the detriment or prejudice of common carriers, shippers or consignees, in violation of section 20 of the Shipping Act, 1916, as amended; and

It further appearing, That the said services, rates, charges, tolls, rentals, rules, regulations, classifications, agreements, acts and practices referred to above, adversely affect interstate or foreign waterborne commerce, and tend to create a chaotic condition in the terminal industry in the San Francisco Bay area;

It is ordered, That the Commission, upon its own motion and without formal pleading, enter upon an investigation to determine whether or not the said services, rates, charges, tolls, rentals, rules, regulations, classifications, agreements, acts, practices and operations of all or any of the said terminals herein named are in violation of sections 15, 16, 17 and 20 of the Shipping Act, 1916, as amended; and

It is further ordered, That the Board of Port Commissioners, Port of Oakland; Eldorado Terminal, and Eldorado Oil Works, Encinal Terminals; Golden Gate Terminals; Howard Terminal; Islias Creek Grain Terminal Corporation; Parr-Richmond Terminal Corporation; Port of Sacramento; Port of Stockton; South San Francisco Terminal Company; Standard Coal Company of California; State Terminal Company, Ltd.; and West Coast Wharf and Storage Company, be, and they are hereby, made respondents in this proceeding; and

It is further ordered, That this proceeding be served upon each of said respondents; and

It is further ordered, That this proceeding be assigned for hearing at such times and places as the Commission may hereafter direct.

By the Commission.

(Seal.) (Sgd.) W. C. Peet, Jr., Secretary.

[fols. 208-210] SUPPLEMENTAL ORDER

At a Session of the United States Maritime Commission held at its office in Washington, D. C., on the 30th day of November A.D. 1939.

No. 555

In the Matter of Practices, etc., of San Francisco Bay Area Terminals

It appearing, That the Commission by order dated November 7, 1939, instituted this proceeding to determine whether or not the services, rates, charges, tolls, rentals, rules, regulations, classifications, agreements, acts, practices and operations of all or any of the terminals named

in said order are in violation of sections 15, 16, 17 and 20 of the Shipping Act, 1916, as amended;

It further appearing, That the Board of State Harbor Commissioners, Port of San Francisco, carries on the business of furnishing wharfage, dock or other terminal facilities in connection with common carriers by water and, therefore, is an "other person subject to this Act" as defined in section 1 of the Shipping Act, 1916, as amended;

It is ordered, That the said Board of State Harbor Commissioners, Port of San Francisco, be, and it is hereby, made a respondent to this proceeding;

It is further ordered, That a copy of this order, and a copy of the aforesaid order dated November 7, 1939 which by reference thereto is made a part hereof, be served upon the said Board of State Harbor Commissioners, Port of San Francisco, San Francisco, California, and that said Board of State Harbor Commissioners be duly notified of the time and place of hearings conducted in this proceeding; and

It is further ordered, That a copy of this order be served upon each respondent named in the aforesaid order dated November 7, 1939.

By the Commission.

(Seal.) (Sgd.) W. C. Peet, Jr., Secretary.

[fols. 211-215] SUPPLEMENTAL ORDER

At a Session of the United States Maritime Commission held at its office in Washington, D. C., on the 3rd day of February A. D. 1940.

No. 555

In the Matter of Practices, etc. of San Francisco Bay Area Terminals

It appearing, That the Commission by order dated November 7, 1939, instituted this proceeding to determine whether or not the services, rates, charges, tolls, rentals, rules, regulations, classifications, agreements, acts, practices and operations of all or any of the terminals named in said order are in violation of sections 15, 16, 17 and 20 of the Shipping Act, 1916, as amended;

It further appearing, That the Commission by supplemental order dated November 30, 1939, made the Board of State Harbor Commissioners, Port of San Francisco, a respondent to this proceeding;

It further appearing, That the State of California by and through a board, known as the Board of State Harbor Commissioners, Port of San Francisco; the Port of Redwood City; Albers Brothers Milling Company; Interstate Terminal; Grangers Terminal Company; and The River Lines, carry on the business of forwarding or furnishing wharfage, dock, warehouse, or other terminal facilities in connection with common carriers by water and, therefore, are "other persons subject to this act" as defined in section 1 of the Shipping Act, 1916, as amended;

It is ordered, That the State of California; the Port of Redwood City; Albers Brothers Milling Company; Interstate Terminal; Grangers Terminal Company; and The River Lines, be, and they are hereby, made respondents to this proceeding;

It is further ordered, That a copy of this order, and a copy of the aforesaid orders dated November 7, 1939, and November 30, 1939, which orders by reference thereto are made a part hereof, be served upon the said additional respondents named herein and that they be duly notified of the time and place of hearings conducted in this proceeding; and

It is further ordered, That a copy of this order be served upon each respondent named in the aforesaid orders dated November 7, 1939, and November 30, 1939.

By the Commission.

(Seal.) (Sgd.) W. C. Peet, Jr., Secretary.

[fol. 216] Report and order of Maritime Commission omitted. Printed side page 17 ante.

[fols. 217-225] Petition of Respondents State of California and Board of State Harbor Commissioners for San Francisco Harbor, named herein as Board of State Harbor Commissioners, Port of San Francisco, for Reconsideration. Omitted. Printed side page 47 ante.

[fol. 226] BEFORE THE UNITED STATES MARITIME COMMISSION

Docket No. 555

In the Matter of Practices, etc. of San Francisco Bay Area Terminals

PETITION FOR RECONSIDERATION—October 10, 1941

[fol. 227] Comes now Respondent Board of Port Commissioners of the City of Oakland and respectfully petitions that the Commission reconsider its order hereinbefore filed in the above entitled proceeding, and in support thereof represents:

I

That the order makes no finding on the issue that the procedure adopted by the Commission in this proceeding denied this Respondent due process of law.

II

That the order is erroneous in that it finds that Congress has constitutional power to regulate a state agency such as this Respondent in the operation of wharves.

III

That the order is erroneous in that it determines that Congress has attempted to give the Commission power to regulate a state agency such as this Respondent in the operation of wharves.

[fol. 228]

IV

That the order is erroneous in that it determines that Congress has given the Commission the power to regulate the rates of any wharfinger.

V

That the order is erroneous in that it makes no finding on the issue that wharf storage is furnished independently of the carrier and consequently is not within the Commission's jurisdiction.

VI

That the order is erroneous in that it makes no finding on the issue that wharf storage rates need not be compensatory.

VII

That the order is erroneous in that it determines that the wharf storage rates presently in effect in the tariff of this Respondent are unlawful.

VIII

That the order is erroneous in that it does not determine that the wharf storage rates presently in effect in the tariff of this Respondent are sufficient to meet the out-of-pocket costs incurred in connection therewith.

IX

That the order is erroneous in that it prescribes a shorter free time allowance than is presently in effect in the tariff of this Respondent.

[fol. 229]

X

That the order is erroneous in that it determines that the lease between this Respondent and Howard Terminal is an agreement within the contemplation of Section 15, Shipping Act, 1916.

XI

That the order is erroneous in that it determines that the pier assignment between McCormick Steamship Company and this Respondent is an agreement within the contemplation of Section 15, Shipping Act, 1916.

XII

That the order violates Section 9 of Article I of the United States Constitution in that it is a regulation of commerce which gives preference to the ports of the states of Washington and Oregon over the respondents in this proceeding in two respects, namely, by prescribing higher wharf storage rates for these respondents while permitting such other ports to maintain lower rates than those prescribed, and by prescribing a shorter free time period for these respondents than is permitted to remain in effect in

such other ports. That such other ports in the states of Washington and Oregon are in competition with this Respondent in connection with the transpacific and intercoastal trades.

This Respondent respectfully urges the Commission that it reconsider its order for each of the reasons above set [fol. 230] forth, and in that connection to reread the original and reply briefs filed by this Respondent in this proceeding. No good would be achieved to repeat here what was set forth in those briefs. There is little to add to the points that were made, and this Respondent is convinced of the soundness of its position.

In view of the fact that the order of the Commission becomes effective on October 27, 1941, it is respectfully requested that the Commission determine forthwith whether or not it will reconsider the issues involved in this docket. That if reconsideration is given, the effective date of the order be postponed until such a reasonable time after the determination on reconsideration has been reached. That if reconsideration be not granted, that this Respondent receive notice to that effect a reasonable time before October 27, 1941 in order that it may take such steps in regard to the order as it may be advised.

Dated at Oakland, California, October 10, 1941.

Respectfully submitted, Charles A. Beardsley, Port Attorney; W. Reginald Jones, Assistant Port Attorney.

[fol. 231] Certificate of Service

I hereby certify that I have this day served the foregoing document upon all parties of record in this proceeding by mailing via first-class mail, postage prepaid a copy to each such party in sufficient time to reach such party on the due date.

Dated at Oakland, California, this 10th day of October, 1941.

W. Reginald Jones.

[fol. 232] ORDER

At a Session of the United States Maritime Commission, held at its office in Washington, D. C., on the 23d day of October, A. D. 1941.

No. 555

Practices, etc. of San Francisco Bay Area Terminals

Upon consideration of petition filed by respondents State of California and Board of State Harbor Commissioners for San Francisco Harbor, dated October 15, 1941, and petition filed by Board of Port Commissioners of the City of Oakland, dated October 10, 1941, for reconsideration; and of petition filed by respondent Stockton Port District, dated October 9, 1941, Petition filed by intervener California and Hawaiian Sugar Refining Corporation, Ltd., dated October 14, 1941, and telegraphic request made by respondent Encinal Terminals, Howard Terminal, and Parr-Richmond Terminal Corporation, dated October 18, 1941, for postponement of the effective date of the order entered herein, dated September 11, 1941, and upon consideration of the record in this proceeding;

It is ordered, That the petitions and requests be, and they are hereby, denied.

By the Commission.

(Seal.) (Sgd.) W. C. Peet, Jr., Secretary.

[fol. 1] PETITIONERS' EXHIBIT No. 2

BEFORE THE UNITED STATES MARITIME COMMISSION

Docket No. 555

In the Matter of SERVICES, RATES, CHARGES, RULES, REGULATIONS, ETC., OF SAN FRANCISCO BAY AREA TERMINALS

Empire Hotel,
San Francisco, California,
February 13, 1940.

Met, pursuant to notice, at 10:00 a. m.
Before G. O. Basham, Examiner.

APPEARANCES:

David E. Scoll, Samuel D. Slade, Attorneys for the Commission.

T. G. Differding, Special Expert to the Commission.

A. L. Jordan, Special Examiner for the Commission.

W. Reginald Jones, Assistant Port Attorney, and M. D. McCarl, Assistant Port Manager and Traffic Manager, of the Board of Port Commissioners of the City of Oakland, Grove Street Pier, Oakland, California, appearing for the Board of Port Commissioners of the City of Oakland, Respondents.

W. F. Williamson and R. P. Norton, 310 Sansome Street, San Francisco, California, appearing for Eldorado Terminal Company and Eldorado Oil Works, Respondents.

Pillsbury, Madison & Sutro, by Eugene D. Bennett and Hugh T. Fullerton, Standard Oil Building, San Francisco, [fol. 2] California; and Lillick, Geary Olson & Charles, by Joseph J. Geary, 311 California Street, San Francisco, California, appearing for Encinal Terminals, Respondents.

Chalmers G. Graham, 311 California Street, San Francisco, California; appearing on behalf of Howard Terminal, Respondent.

Earl Warren, Attorney General of the State of California, by Lucas E. Kilkenny, Deputy Attorney General, Sacramento, California; appearing for State of California, Board of State Harbor Commissioners for San Francisco Harbor, Respondent.

F. A. Somers, 465 California Street, San Francisco, California; appearing for Grangers Terminal Co., Port Costa, California, Respondent.

W. G. Stone, 917 7th Street, Sacramento, California; appearing for Port of Sacramento and the Sacramento Chamber of Commerce, Respondent.

P. J. Shaw, South San Francisco, California; appearing for South San Francisco Terminal Company, Respondent.

J. Richard Townsend, 1815 Mills Tower, San Francisco, California; appearing for Stockton Port District and Parr-Richmond Terminal Corporation, Respondents.

Fred D. Parr, No. 1 Drumm Street, San Francisco, California; appearing for Parr-Richmond Terminal Corporation, Respondent.

B. C. Allin, P. O. Box 2089, Stockton, California; appearing for Stockton Port District, Respondent.

Leslie M. Rudy, Redwood City, California; appearing for the Port of Redwood City, Respondent.

C. O. Burgin, 1100 West Poplar Street, Stockton, California; appearing for Port of Stockton, Respondent.

C. S. Connolly, 111 W. Massachusetts Street, Seattle Washington; appearing for Albers Bros. Milling Co. and Interstate Terminals, Ltd., Respondents.

[fol.3] W. S. Bell, San Francisco, California; appearing for Islais Creek Grain Terminal Corporation, Respondent,

McCutchen, Olney, Mannon & Greene, by J. H. Anderson and F. W. Mielke, Balfour Building, San Francisco, California; appearing for The River Lines, Respondent.

H. V. Nootbarr, Oakland, California, appearing for West Coast Wharf & Storage Company, Respondent.

Joseph J. Burns, Box 54, Alameda, California; appearing for Standard Coal Company, Respondent.

W. R. Gerini, San Francisco, California; appearing for State Terminal Company, Ltd., Respondent.

J. R. West, appearing for Northwest Marine Terminal Association, Intervener.

C. A. Hoffman, San Diego, California; appearing for the Port of San Diego, Intervener.

L. A. Bailey, 216 Pine Street, San Francisco, California; and Reginald L. Vaughan, Mills Tower, San Francisco, California; appearing for Warehousemen's Association of the Port of San Francisco, Intervener.

E. M. Cole, American Cast Iron Pipe Co., Birmingham, Alabama; appearing for American Cast Iron Pipe Co. and the Cast Iron Pressure Pipe Institute, Intervener.

Edwin G. Wilcox, Financial Center Building, San Francisco, California; appearing for Oakland Chamber of Commerce, Intervener.

Elmer Westlake, 215 Market Street, San Francisco, California; appearing for Western Sugar Company and Spreckels Sugar Refinery, #2 Pine Street, San Francisco, California; and California and Hawaiian Sugar Refining Corporation, Ltd., 215 Market Street, San Francisco, California, Intervener.

[fol. 4] Reginald F. Walker, 2 Pine Street, San Francisco, California; appearing for Western Sugar Refinery and Spreckels Sugar Company, Intervener.

H. A. Lincoln, 701 Russ Building, San Francisco, California; appearing for Fibreboard Products, Inc., Intervener.

Walter A. Rohde, 333 Pine Street, San Francisco, California; appearing for San Francisco Chamber of Commerce, Intervener.

Warren H. Lamont, Vice president; John L. Kelly, Secretary; Elor J. Amar, Port Manager; Chas. A. Bland, Traffic Manager of the Board of Harbor Commissioners, Long Beach, California, appearing for Board of Harbor Commissioners of Long Beach, California, Interveners.

Clyde M. Leach, Los Angeles, California, appearing for Board of Harbor Commissioners of the City of Los Angeles, Intervener.

L. N. Fites, 2900 5th Street, Berkeley, California; appearing for The Glidden Company, Berkeley, California, Intervener.

J. K. Hiltner, Burlington, New Jersey; appearing for United States Pipe & Foundry Company, and the Cast Iron Pressure Pipe Institute, Intervener.

[fol. 5] COLLOQUY

Examiner Basham: Come to order, please.

The United States Maritime Commission has set for hearing at this time and place, Docket No. 555, in the Matter of Practices, etc., of San Francisco Bay Area Terminals.

This is an investigation to determine whether or not the services, rates, charges, codes, rentals, rules, regulations, classifications, agreements, acts, practices and opera-

tions of all or any of the terminals named in the Order are in violation of Sections 15, 16, 17 and 20 of the Shipping Act of 1916, as amended.

I should like now to call for the appearances on behalf of the respondents.

Mr. Jones: W. Reginald Jones, Assistant Port Attorney, and M. D. McCarl, Traffic Manager and Assistant Port Manager of the Board of Port Commissioners of the City of Oakland. This appearance is subject, however, to the following motion:

We hereby move you, Mr. Examiner, that the present proceedings be dismissed as to the Respondent Board of Port Commissioners on the ground that this Commission has no jurisdiction over a municipal corporation or a state agency; that Congress has no constitutional power to regulate the governmental activities of those local bodies.

Examiner Basham: That motion will be overruled.

[fol. 6] Mr. Jones: May it be understood, Mr. Examiner, that our continued appearance in this proceeding is subject at all times to that motion?

Examiner Basham: Yes, sir. Anyone else?

Mr. Confiolly: C. S. Conolly; Albers Bros. Milling Co. and Interstate Terminals.

Mr. Graham: Chalmers G. Graham, Howard Terminal.

Mr. Townsend: J. Richard Townsend, speaking for the Stockton Port District, which operates the Port of Stockton; Colonel B. C. Allin, Director of the Port, and Mr. C. O. Burgin, Traffic Manager. The addresses of those two are Port of Stockton, Stockton, California. My address is 1815 Mills Tower, San Francisco.

For the Parr-Richmond Terminal Corporation, Mr. Fred D. Parr, President, No. 1 Drum Street, San Francisco, and J. Richard Townsend, 1815 Mills Tower, San Francisco.

Mr. Somers: F. A. Somers; Grangers Terminal Co.

Mr. Bell: W. S. Bell, Islais Creek Grain Terminal Corporation.

Mr. Norton: W. F. Williamson and R. P. Norton, appearing for Eldorado Terminal Company and Eldorado Oil Works.

Mr. Kilkenny. Mr. Chairman, may I enquire whether the State of California and Board of State Harbor Commis-

sioners of San Francisco Harbor are separately made [fol. 7] respondents? I am not sure.

Examiner Basham: That is my understanding.

Mr. Kilkenny. At this time, if your Honor pleases, Earl Warren, Attorney General of the State of California, and Lucas Kilkenny, Deputy Attorney-General, make a special appearance for the State of California, respondents, and Board of State Harbor Commissioners and move to dismiss this investigation so far as it relates to either of these respondents, on the ground that the Commission is without authority to investigate any of the practices, or acts of the State of California or the Board of State Harbor Commissioners for San Francisco Harbor, respondents in this proceeding; on the further ground that there is no constitutional authority for Congress to extend its regulatory power in any manner over either the State or the Board; and that the Shipping Act of 1916 does not apply to or include the State of California or the Board of State Harbor Commissioners for San Francisco Harbor; and that the Commission is not authorized by any other statutory authority to investigate any of the matters or things referred to in the Shipping Act of 1916, as amended, and particularly Sections 15, 16 and 17 of that Act.

Examiner Basham: The motion will be denied.

Mr. Kilkenny: If your Honor please, then, we will appear generally subject to that ruling. May I ask that if [fol. 8] we request or deem it advisable, we may later file a formal objection to the jurisdiction?

Examiner Barton: Yes, sir.

Any further appearances?

Mr. Shaw: P. J. Shaw, South San Francisco, California; for the South San Francisco Terminal Company.

Mr. Stone: W. G. Stone, 917 7th Street, Sacramento; for the Port of Sacramento and the Sacramento Chamber of Commerce.

Mr. Wilcox: Edwin G. Wilcox, Financial Center Building; for the Oakland Chamber of Commerce.

Mr. Bailey: Leon A. Bailey, 216 Pine Street, San Francisco, California; and Reginald L. Vaughan, Mills Tower, San Francisco, California; appearing for Warehousemen's Association of the Port of San Francisco.

Mr. Rudy: Leslie M. Rudy, appearing for the Port of Redwood City.

Mr. Bennett: Pillsbury, Madison & Sutro, by Eugene D. Bennett and Hugh T. Fullerton, Standard Oil Building, San Francisco, California; Lillick, Geary, Olson & Charles, by Joseph J. Geary, 311 California Street, San Francisco; for Encinal Terminals.

Mr. Mielke: J. H. Anderson and F. W. Mielke, of McCutchen, Olney, Mannon & Greene appearing for the River Lines.

[fol. 9] Mr. Burns: Joseph J. Burns, for the Standard Coal Company.

Mr. Nootbaar: H. V. Nootbaar, for the West Coast Wharf & Storage Company.

Examiner Basham: Is that all?

Mr. West: J. R. West; Marine Terminal Association.

Mr. Rohde: Walter A. Rohde, for the San Francisco Chamber of Commerce.

Mr. Lamont: Board of Harbor Commissioners of Long Beach, Mr. Examiner: Warren H. Lamont; John L. Kelly; Elor J. Amar and Charles A. Bland.

Mr. Westlake: Elmer Westlake, 215 Market Street, San Francisco, for Western Sugar Company, Spreckels Sugar Refinery; both located at No. 2 Pine Street, San Francisco; and California and Hawaiian Sugar Refining Company, Ltd., 215 Market Street, San Francisco.

Mr. Leach: Clyde M. Leach for the Board of Harbor Commissioners for the City of Los Angeles.

Mr. Hoffman: C. A. Hoffman for the Port of San Diego.

Mr. Walker: Reginald F. Walker, No. 2 Pine Street, San Francisco; for the Western Sugar Refining and Spreckels Sugar Company.

Mr. Gerini: W. R. Gerini for State Terminal Company of San Francisco.

[fol. 10] Examiner Basham: Are those all of the appearances?

Mr. Hiltner: J. K. Hiltner, Burlington, New Jersey; for United States Pipe & Foundry Company and The Cast Iron Pressure Pipe Institute.

Examiner Basham: Who appears for the Maritime Commission.

Mr. Scoll: David E. Scoll and Samuel D. Slade, attorneys; A. L. Jordan and T. G. Differding.

Examiner Basham: Off the record.

(Remarks outside the record.)

Examiner Basham: Do you have a statement to make?

Mr. Scoll: Mr. Examiner, I should like to state for the benefit of the Respondents and witnesses and others who have appeared and who have been subpoenaed to appear here today that we will take up the issues in this case in the following order:

1. We will consider the agreements, leases and arrangements which it is alleged should be followed under Section 15 of the Commission. Then we will consider alleged violations of Sections 16 and 17 of the Shipping Act of 1916.

Following that we will consider the issue of wharf demurrage.

That is all I have to state on that.

Examiner Basham: All right, sir. Will you call your first witness?

[fol. 11] Mr. Scoll: Is Mr. Mark Gates here?

Mr. Gates: Yes.

Mr. Scoll: Will you take the stand, please, Mr. Gates?

Mark H. Gates was thereupon called as a witness for the Commission and, having been first duly sworn, testified as follows:

Direct examination.

By Mr. Scoll:

Q. Will you please tell the reporter your name?

A. Mark H. Gates.

Q. Your occupation?

A. Secretary of the Board of Harbor Commissioners, Port of San Francisco.

Q. How long have you been in that position?

A. A little over 12 years.

Q. Will you describe briefly for the record the functions of the State Board of Harbor Commissioners?

A. Generally speaking, the functions are to provide facilities for the handling of freight and passengers on the San Francisco waterfront; also operate about 65 miles of belt railroad.

Q. The State Board of Harbor Commissioners is a public body, is it not?

[fol. 12] A. The State Board of Harbor Commissioners is a State body. The members are appointed by the Governor of the State.

Q. And it was created under the statutes of the State of California?

A. About 1863, I believe.

Q. And it controls the terminals that you speak of that are operated by it or under its supervision?

A. Yes. It controls all of the commercial waterfront of San Francisco.

Q. Are there any private terminals as such, in San Francisco or are all the terminals under the control of the State Board?

A. All of the terminals are under the control of the State Board.

Q. Does the Board publish a tariff?

A. It does.

Q. Is the Board regulated by the Railroad Commission of the State of California?

A. It is not.

Q. Does it file a tariff with the Railroad Commission?

A. No, it does not.

Q. What are the arrangements under which the Board of Harbor Commissioners assigns space to the various steamship lines that use the terminals under the Board's jurisdiction?

A. They are given a preferential assignment for the use [fol. 13] of certain space, subject to cancellation on 30 days' notice.

Q. Actually, however, these assignments are renewed quite regularly as they expire, are they not?

A. No, they are not renewed. They are allowed to continue until some change is made in them.

Q. Does the Board charge a rent for the use of the space?

A. Yes, it does.

Q. On what base is the rent determined?

A. On a square foot basis.

Q. Does the Board collect any charges for the use of the space, in addition to rent?

A. It collects dockage charges on the vessel; it collects a toll on the merchandise moving over the piers; and it col-

lects a demurrage on cargo remaining on the piers beyond the free time.

Q. These charges that you have just mentioned are all established by the Board?

A. They are.

Q. And published in its tariff?

A. That is right.

Q. I show you, Mr. Gates, Form No. 2, Board of State Harbor Commissioners for San Francisco Harbor, San Francisco, California, entitled "Assignment of Space." This is a form evidently of the space assignment. Is that correct?

A. Yes, sir. That is right. That's a copy of the form.

[fol. 14] Mr. Scoll: I would like to introduce this.

Mr. Kilkenny: Before you introduce that, is that the last form?

The Witness: I think so.

Mr. Scoll: I would like to introduce this form for the record.

Examiner Basham: It will be received as Exhibit No. 1.

(The form of space assignment referred to was marked "Commission's Exhibit No. 1" and received in evidence.)

By Mr. Scoll:

Q. I will show you a typewritten list entitled "Board of State Harbor Commissioners for San Francisco Harbor, Pier and Wharf Area Assigned for Shipping, Statement of Pier and Wharf Assignments in effect as of January 24, 1940."

A. Yes. That was taken from the records of the Board and I think it covers all of the assignments on the piers for the cargo handling purposes.

Q. Was that list prepared by you or under your supervision?

A. Under my supervision, yes.

Q. Golden Gate and State Terminal Company, Limited that are indicated on there, they are terminal operators, are they not?

A. That's right.

Q. And they hold under assignments from the State

[fol. 15] Board of Harbor Commissioners?

A. They have assignments for office space only.

Q. And on what basis do they pay rent?

A. They just pay for their office rent.

Q. They don't hold any assignment of any other space but the office?

A. No, that's all.

Mr. Scoll: I would like to offer this list for the record. It is a list entitled "Pier and Wharf Area Assigned for Shipping," just identified by Mr. Gates.

Examiner Basham: It will be received as Exhibit No. 2.

(The list of pier and wharf area assigned for shipping referred to was marked "Commission's Exhibit No. 2," and received in evidence.)

By Mr. Scoll:

Q. Now, Golden Gate and State Terminals do perform terminal services on the piers which they occupy, do they not?

A. That's right.

Q. What piers do they occupy?

A. The State Terminal occupies what we term as "Pier 56" and the Golden Gate Terminals occupy Pier 45.

Q. Now, do they operate those terminals under your supervision?

A. Yes.

[fol. 16] Q. And control?

A. Yes, sir.

Q. Will you describe briefly the extent of your supervision and control which you exercise over their operations?

A. Well, the Board has complete control over the facilities. They are simply there to handle such cargo as they may be able to obtain and to handle for the shipper.

Q. Are these the only terminal operators who hold assignments from the Board?

A. No. There is one more: The Islais Creek Grain Terminal Corporation.

Q. Now, the terminal services which they perform for shippers, consignees and steamship lines, do they perform for themselves or acting as your agent?

A. Oh, for themselves. These services they perform, they perform for themselves.

Q. The space which they occupy for the services, in addition to the office space, that would be the transit shed and adjoining spaces, and they pay no rent for those?

A. No rent.

Q. What charges does the Board of Harbor Commissioners collect from these terminals?

A. They collect the same charges that they do on all other piers; dockage tolls and demurrage.

Q. And all other charges, such as service charges, storage [fol. 17] charges, if any, or other charges which they might collect they collect for themselves?

A. Not storage charges because they collect only charges for services which they perform. The Board of State Harbor Commissioners collect all storage charges on cargo or demurrage charges on cargo contained in the terminals.

Mr. Scoll: That is all for the moment. I want to call you again in a few minutes.

Examiner Basham: Just a moment, please. Any questions?

Cross-examination.

By Mr. Somers:

Q. I should like to ask Mr. Gates concerning the Islais Creek Grain Terminal Corporation as to its occupancy of a certain section of the Islais Creek Terminal for grading and cleaning grain. Is that not operated under a rental arrangement?

A. Yes, it is, Mr. Somers.

Q. How much area is included in that particular activity?

A. I couldn't tell you offhand.

Q. What is the monthly rental charge?

A. I believe, and I am only—I want to check this—I believe that it is $250 a month.

Q. Tell me about the concession enjoyed by the Islais Creek Grain Terminal Corporation in the unloading, re- [fol. 18] ceiving, weighing, piling and redelivering, reloading of grain, etc. They perform that, do they not, under their own direct control and without any interference on your part?

A. There is no interference. However, it is always subject to the control of the Board of State Harbor Commissioners.

Q. What rate do they pay for that valuable concession? Strike out the word "valuable." In what way do they pay for that concession?

A. Well, they pay the Board only a rental for such space as they use for their cleaning and grading operations and their offices.

Q. Under whose direct control is all the grain that is delivered at the terminal?

A. It's under the control of the Islais Creek Terminal Corporation.

Q. Do they have legal jurisdiction over its movement, or is that vested in the State Board of Harbor Commissioners?

A. Well, I don't know about the legal question involved, but the Board of State Harbor Commissioners has complete control at all times and can make any changes or issue any orders that they see fit.

Q. Let me ask you if a farmer, we will say, desires to deliver some grain to San Francisco to be held on bulkhead demurrage for a period, whom does he consult? You? [fol. 19] The State Board of Harbor Commissioners, or the Islais Creek Grain Corporation?

A. Generally we consult the Islais Grain Terminal Corporation; sometimes the Board of Harbor Commissioners.

Q. Pardon me?

A. Generally, I say, and in most cases they consult the operators of the terminal. But in some cases they consult the Board of State Harbor Commissioners.

Q. In other words, the Islais Creek Grain Terminal has general jurisdiction and management over that particular terminal as to when and from whom grain shall be received and to whom it shall be delivered, etc.?

A. Well, as far as I know, the Islais Creek Grain Terminal Corporation has never refused to accept any grain that has been offered to it by any shipper. If that were done, I am inclined to believe that the Board would take a hand in the situation.

Q. How about a farmer?

A. A farmer, any shipper. The terminal is open to any shipper who wishes to make use of it.

Q. Has anybody ever applied to you for the concession of servicing grain at that terminal?

A. No.

Q. Is there any method that you might determine who shall enjoy the concession? Is there any rule or practice [fol. 20] that governs you?

A. Well, there is this: That in order to operate a terminal someone must have charge of it and be responsible for the merchandise in the terminal; and, therefore, it's usually turned over to one company or one party, who is held responsible by the Board of State Harbor Commissioners, and who is responsible for the operations and for the merchandise.

Q. I think I asked the question before, but to clarify it a little bit. In whose custody is the grain on the Islais Creek Grain Terminal vested?

A. Well, the Board of State Harbor Commissioners has no responsibility in any case for cargo shipped through the port.

Q. You have no watchman at night?

A. We have some watchman but we are not responsible for cargo. That is usually the responsibility of the steamship companies, or the terminal operator.

Mr. Somers: I think that is all.

By Mr. Townsend:

Q. I have one question, please. Who collects the storage at the Islais Creek Grain Terminal; the storage charges?

A. The Board of State Harbor Commissioners.

Q. Is there much of a storage charge for that facility?

A. Considerable, yes.

Q. And that is for the storage of grain there?

[fol. 21] A. Grain, yes.

Mr. Townsend: That is all, thank you.

Redirect examination.

By Mr. Scoll:

Q. Mr. Gates, before you leave the stand, what employees of the Board perform any duties in connection with the three terminal operations we have just been discussing: The Golden Gate, State and Islais Creek?

A. The State Wharfinger.

Q. The State Wharfinger?

A. Yes.

Q. And his duties extend to all of these piers, not only to these three?

A. That is right.

Q. Are there any employees of the Board whose duties are confined to employment or work performed on these three terminals alone?

A. Well, the Wharfinger who performs services at these terminals may also perform services at a wharf adjacently; the next wharf.

Q. The State Wharfinger has general supervision over all of that?

A. General supervision over all of them; yes.

Q. Are there some State employees who work only on these terminals?

[fol. 22] A. No; for instance, take Islais Creek Terminal. There is also another wharf down there where considerable lumber is handled; another product. And the Wharfinger handles both of these facilities.

Q. The State Wharfinger?

A. The State Wharfinger.

Q. Well, you would say that there are no State employees —that is, employees of the Board—whose duties are confined exclusively to employment on these three or any one of the terminals?

A. Well, it might happen, but usually the work of the Wharfinger is distributed so that each one has a certain amount to do, and it may be one or two or three piers. I couldn't tell you just exactly where they are, each one of them.

Q. And those employees under the direction of the State Wharfinger would do work perhaps on any or all of the terminals?

A. Oh, they do; yes.

Q. And the State Wharfinger is the only State employee whose duties would spread over all of these terminals?

A. Well, yes. It is his duty to take note of all the cargo and all the movements of all the vessels; make a record of them; make the necessary charges.

Q. He and his employees?

[fol. 23] A. He and his assistants.

Q. I mean assistants.

A. Yes.

Mr. Scoll: That is all for the moment.

Recross examination.

By Mr. Kilkenny:

Q. Mr. Gates, does the Wharfinger make the same kind of collection at that terminal as he does at all other piers?

A. Yes.

Q. That is, he collects all the dockage?

A. Yes.

Q. All the tolls?

A. Yes.

Q. What else?

A. The demurrage.

Q. The rental is paid?

A. Directly to the office of the Board.

Mr. Scoll: Would that also be true of the storage charges on these terminals?

The Witness: The Chief Wharfinger reports all those charges.

By Mr. Kilkenny:

Q. When you speak of "Storage charges" what do you mean?

A. Well, we term them "Demurrage charges."

Q. That is simply a charge for commodities that are left [fol. 24] on the wharf?

A. Just a charge for commodities that are left on the wharf beyond the free time.

Q. What is the free time allowed?

A. The free time is allowed in some cases, five days, sometimes seven, according to the circumstances; sometimes ten days for either assembly or removing cargo from the wharf. It is a reasonable time for assembling cargo for the loading of a vessel or a reasonable time for the removal of cargo from the piers after its discharge from the vessel.

Q. That is all fixed by rules and regulations of the Board?

A. It is.

Q. And the charges are fixed by the rules and regulations?

A. That is right.

Q. Taking up that matter of storage again, is there any storage in that terminal besides the storage on the wharf that you have spoken of?

A. I don't quite understand your question.

Q. Is there any other storage there by the assignee of space?

A. No, no.

Q. And the only storage that is there is the leaving of goods on the wharf beyond the free time, is that right?

A. That is right.

Q. And the Board of Harbor Commissioners collects for that?

[fol. 25] A. That is right.

Q. Is grain left there for any other purpose than for shipping?

A. Probably not. It is understood when grain comes in there that it is usually for export, for shipping by water.

Q. And that is the only purpose for which the grain is left on the wharves?

A. Yes.

Q. The Board does not engage in the business of warehousenan, is that correct?

A. That is correct; it does not.

Q. It is forbidden by law to do so?

A. It is.

Redirect examination.

By Mr. Scoll:

Q. You stated that all storage of any kind on these terminals is classed as demurrage?

A. Yes.

Q. By that you mean that any storage beyond the free time would be called "demurrage"?

A. That is right.

Q. That storage, however, might run for a considerable time, might it not?

A. Yes, it might.

Q. Both inbound and outbound?

[fol. 26] A. It might.

Mr. Scoll: That is all.

Recross examination.

By Mr. Kilkenny:

Q. Mr. Gates, when you speak of "demurrage" charges, will you explain what the purpose of the demurrage charge is?

A. Well, the charge is made for the use of the facility beyond the free time allowed by the rules of the Board for occupancy of the space.

Q. And it is imposed principally for the purpose of facilitating the movement of goods so as not to clog the space on the wharf?

A. Well, yes. One of the rates applied by the Board on the regular piers is rather a penalty rate for the purpose of forcing cargo off the piers so that it continue to operate the pier.

By Mr. Somers:

Q. One more question, please. The element of time, Mr. Gates; is there any limit of time during which grain may remain at the Islais Creek Terminal under you- tariff publication?

A. No, there is not.

Q. It could remain there forever, could it not, unless it became a public nuisance and was condemned for removal?

A. There are no rules against the grain remaining there.

Q. Are you familiar with your tariff? Can you tell us [fol. 27] anything about the charges per month or so-called bulkhead demurrage?

A. Well, charges are different in the grain terminal from what they are in the other terminals, and I haven't the tariff with me. I can't cite them offhand.

Q. Do you recall the fact that your tariff states that after the first three months the demurrage charge be five cents per ton per month?

A. Yes. It is less after the first three months than it is for the first three months.

Mr. Scoll: Mr. Somers, we are planning to take up the question of wharf demurrage in some detail later on. We are going to cover all that in which you are interested much more extensively later on.

Redirect examination.

By Mr. Scoll:

Q. One further question, Mr. Gates. You mentioned that the demurrage charge on the transit piers, those that are

used almost exclusively for transit operation, such as the steamship piers, I think you had in mind?

A. Yes.

Q. That charge, you say, is high enough to be in effect a penalty charge?

A. Yes.

Q. You don't regard, however, that all of the storage [fol. 28] charges on these terminals are in the nature of penalty charges? They are more in the nature of charges for the occupation of the space?

A. That is right; for the concentration of cargo for outbound movement.

Mr. Scoll: That is right. That is all.

Examiner Basham: Mr. Gates, you say that the Board collects these charges. Just what are the charges besides dockage and wharfage?

Mr. Scoll: Mr. Examiner, I am going to take that up with the next witness.

Examiner Basham: What I wanted to find out is just exactly what the lessee did in this operation. You say the State collects the charges. What does the lessee do?

The Witness: The State collects the charges for dockage and tolls and demurrage. The lessee collects charges for clerking, handling, and any other service that he may perform for the shipper.

Examiner Basham: I see. I suppose those handling services are performed by employees of the lessee?

The Witness: That is right.

Examiner Basham: That is all.

Mr. Kilkenny: Do I understand that Mr. Gates is going to be recalled?

Mr. Scoll: Yes, very soon.

[fol. 29] Mr. Kilkenny: And we may cross-examine him again in regard to the testimony that he has given now at a later time, Mr. Chairman?

Examiner Basham: That is true.

Mr. Scoll: I am going to call him back shortly. I have two short witnesses, and then I shall recall him.

Mr. Gerini.

W. R. GERINI was thereupon called as a witness for the Commission and, having been first duly sworn, testified as follows:

Direct examination.

By Mr. Scoll:

Q. Would you give the reporter your full name, please?

A. W. R. Gerini.

Q. And you are Secretary of the State Terminal Company, Limited?

A. That is correct.

Q. How long have you been the Secretary?

A. Approximately, let us say, eight years; between eight and nine years.

Q. And the State Terminal Company, Limited, is the terminal company that was referred to by Mr. Gates, that operates at Pier 56, is that correct?

A. That is correct.

Q. And it holds an assignment from the Board of Har- [fol. 30] bor Commissioners?

A. That is correct.

Q. How long has it been operating in that vicinity?

A. The State Terminal Company, Limited, has been operating since June 1, 1931.

Q. Did it operate any other facility prior to its occupation at Pier 56?

A. No, it was a new company.

Q. It is a private corporation, is it not?

A. A private corporation.

Q. And its stock is held by private individuals?

A. By private individuals.

Q. Will you describe for the record briefly the services which State Terminal, Limited, offers at Pier 56?

A. The State Terminal Company, Limited services consist almost entirely of providing terminal services for such steamship companies as may desire them. Also we engage in shipside warehousing on a limited scale.

Q. You may recall that Mr. Gates has stated that certain of the charges applicable to the services at State Terminal are established and collected by State Terminal for its own use. Now, would you elaborate the description of those in more detail?

A. Well, for instance, a steamship company using the facility would be assessed what we call a terminal charge [fol. 31] which consists of clerking the cargo for the vessel.

Q. And the rate for that service is established by you?

A. Is established by us and is on file in our tariff on file with the Railroad Commission. It is published in our tariff.

Q. You have a tariff that is published and filed with the Railroad Commission of the State of California?

A. We have.

Q. What other services do you have besides the clerking charge which you establish?

A. Well, we have shipside warehousing facilities available.

Q. And are there any others?

A. We do perform carloading and unloading. However, those services are on a limited scale at the present time.

Q. And those are services that you charge for?

A. We charge for those, yes.

Q. And those rates are published in your tariff?

A. Those rates are also published in our tariff.

Mr. Kilkenny: May we have that last answer read?

(The answer referred to was read by the reporter as above recorded.)

By Mr. Scoll:

Q. Are there any others?

A. No, there are no others of any importance.

Q. What do you mean, the carloading and unloading [fol. 32] services performed on a limited scale at the present time?

A. Well, all rates for carloading and unloading were published in the tariff to apply not only on State Terminal Facility 56, but also to apply on other piers on the San Francisco water front, and there are several private car unloading contractors who get the bulk of this carloading and unloading business.

Q. When you say that it is the charges that apply to car loading and unloading at other piers, you don't mean that the State Terminal, Limited, unloads and loads cars at other piers, do you?

A. Yes, we have.

Q. You have done that?

A. Yes.

Q. In other words, you were also in the private, or in the loading and unloading—strike that. I will put the question this way: You also contracted for loading and unloading at piers in San Francisco besides your own?

A. We do not contract. We perform the service as requested.

Q. Was that in connection with making up shipments to go out over your pier?

A. No, not necessarily. For example, I might state that a shipper would have some carloads of freight to be discharged, say, at Pier 31, and would request us to discharge those cars, but that cargo would have no connection with the [fol. 33] operation of the State Terminal Facilities, themselves.

Q. No part of the cargo would cross your terminal?

A. No, it would not.

Q. The tolls, dockage and the demurrage charges which are payable to the Board of Harbor Commissioners, you publish those in your tariff, do you not, as a matter of information?

A. Those are published merely for information purposes.

Q. Does the State Terminal solicit terminal business, the same as the other private terminals in the Bay Area?

A. Yes, we do.

Q. And do you consider yourself in competition with the other terminals in the Bay Area?

A. Yes, we do.

Q. Such as Howard, Encinal, Oakland?

A. That is correct.

Q. I show you a document entitled "Receipt, State Terminal Co., Ltd." You are familiar with that document, are you not?

A. Yes, I am.

Q. Is this a duplicate of a negotiable receipt that is issued by the State Terminal for storage?

A. Yes, it is.

Mr. Scoll: I would like to offer this for identification at this time, Mr. Examiner.

Examiner Basham: It will be identified as Exhibit No. 3.

[fol. 34] (Duplicate of negotiable receipt was marked for identification as "Commission's Exhibit No. 3.")

By Mr. Scoll:

Q. This exhibit No. 3 is a duplicate of a form of receipt which you issued for what service?

A. Where a shipper wishes to place some merchandise on our facility for storage while in transit and requests a receipt—in this case, a negotiable receipt—to cover that merchandise, that form is used.

Q. So the original receipt is a negotiable receipt?

A. It is.

Q. And are they registered?

A. In what way? The receipts are numbered, if that is what you mean?

Q. Yes.

A. Yes.

Mr. Scoll: I would like to offer this for the record at this time, Mr. Examiner.

Examiner Basham: It will be received.

Mr. Kilkenny: Is that offered in evidence now?

Mr. Scoll: That is offered in evidence now, yes.

(The duplicate of negotiable receipt, heretofore marked for identification "Commission's Exhibit No. 3", was thereupon received in evidence.)

By Mr. Scoll:

[fol. 35] Q. Does State Terminal publish a warehouse tariff?

A. No, we do not. All rates dealing with our warehousing operations are dealt with in our tariff.

Q. So that the rate for the storage under which that receipt is issued is published in your tariff?

A. The rates for handling and storing, yes.

Q. Handling and storage?

A. Yes.

Q. Now, State does not hold a license of public convenience and necessity, which is required of warehouses under California law in cities of 150,000 and over, does it?

A. Well, our facility is not considered a warehouse.

Q. My question is, "You do not hold a warehousing license?"

A. No, we do not.

Mr. Vaughan: What was that last question? He said a "Warehouse license"?

Mr. Scoll: Yes; a license of public convenience and necessity.

Mr. Vaughan: Yes.

By Mr. Scoll:

Q. Now, do you actually receive for your own use any of the charges for the storage under that receipt?

A. For storage, no. Our storage is assessed and collected by the Board of State Harbor Commissioners.

Q. Do you collect it for them or do they collect it directly? [fol. 36] A. If the shipper is on the approved credit list of the Board, the Board bills the shipper direct. But if the shipper is not known to the Board we collect from the shipper, and, in turn, reimburse the Board.

Q. And under your arrangement with the Board you are responsible for the payment of those storages, those storage charges?

A. We are, yes.

Q. So that if the shipper were not on the credit list and you were unable to collect the charges from him, you would have to make them up yourself?

A. We would.

Q. Now, does the Board of Harbor Commissioners compensate you for the storage service?

A. No. The entire amount of the storage is retained by the Board.

Q. Who is liable to the shipper, the consignee, for loss or damage of the goods?

A. In our case the State Terminal would be responsible.

Q. You are responsible?

A. We are responsible.

Q. And so that if there were damage to the goods that were stored there, even though such damage were not the result of any act of any employee of State Terminal, nevertheless State Terminal would have to make the damage good to the owner of the goods; is that correct?

[fol. 37] A. That is correct.

Q. Does State Terminal handle freight for all trades?

Mr. Kilkenny: Pardon me? I did not get that question.

Examiner Basham: Read it, please.

(The pending question was read by the reporter as above recorded.)

By Mr. Scoll:

Q. That is, coastwise, intercoastal, off-shore and foreign?

A. With the exception of coastwise, we handle freight for practically all trades.

Q. Is there any particular reason why you don't handle coastwise or just that there isn't any?

A. In San Francisco the coastwise lines in all cases maintain their own piers.

Q. Is State Terminal a member of the Marine Terminal Association of California?

A. We are.

Mr. Scoll: That is all for the moment.

Examiner Basham: Any questions?

Mr. Kilkenny: May I have just a moment?

Cross-examination.

By Mr. Kilkenny:

Q. Mr. Gerini, I think you in referring to the fact that your company furnishes loading and unloading services at other piers when requested, you stated that that was the [fol. 38] only charge you made at other piers; is that correct?

The Witness: I didn't understand your question.

Mr. Kilkenny: Read the question.

(The pending question was read by the reporter as above recorded.)

A. Well, I understood that question to mean car loading and car unloading.

By Mr. Kilkenny:

Q. Yes. And that is the only service you charge for at other piers?

A. Unless I might make this statement: That if for some reason we were not able to berth a vessel at our present facility, the Board will assign us a pier on the outside and we will perform our terminal service at that pier.

Q. That is, you will perform all of the services of which you have spoken at the other pier?

A. That is correct.

Q. But as a general rule, when you perform carloading and unloading services at other piers, that is merely a service that you give in the same way that any other private unloader undertakes to perform?

A. That is right, except that we are really in direct competition for private unloading and loading contractors for that particular service.

Q. And that is merely incidental to your general business?

[fol. 39] A. It is merely incidental.

Mr. Kilkenny: That is all.

Redirect examination.

By Mr. Scoll:

Q. To what extent do you perform services at other piers, which you have just described?

A. Do you refer to——

Q. (Interrupting) With reference to the questions just asked you by Mr. Kilkenny.

A. Oh, where I mentioned that we might put a boat at an outside pier?

Q. Yes.

A. In that case we'd perform only the terminal service consisting of the checking of the cargo. We would perform no warehousing.

Q. I understand. Do you furnish that type of service very often?

A. Only if congestion develops on the terminal facilities where we are unable to berth a vessel; why, then we must call on the Board for an additional outside berth.

Q. How often does that happen?

A. Usually in the fresh fruit season sailings are quite frequent, and since the second floor of the Facility 56 building is devoted to State Refrigeration Terminal, quite often

vessels loading at that refrigeration terminal have the [fol. 40] berths occupied and we are then obliged to seek an outside berth for our regular vessels.

Q. And they allow you to use other berths under specific additional assignments, or is that under the general assignment which you ordinarily hold?

A. Well, it's,—I guess technically you could call it a new assignment in each case for that one vessel. In other words we are obliged to pay office rent at whichever pier we receive this vessel.

Q. But you pay only office rent?

A. Just for the period that we are handling the vessel.

Q. Did State make out a special assignment to you every time that happened?

A. No. That is usually requested either by phone or by letter for it, and the assignment is made—is usually made by phone. There is nothing written.

Mr. Scoll: That is all.

Examiner Basham: You are excused.

(Witness excused.)

Mr. Scoll: Mr. Day McCrone?

(No response.)

By the way, Mr. Examiner, the record should show that both Mr. Gates and Mr. Gerini were subpoenaed by the Commission. Mr. McCrone is not here? (No response.)

Mr. McCrone was also subpoenaed to appear this morn-[fol. 41] ing. We will have to take him later.

Mr. Gates, will you take the stand again, please?

Mark H. Gates was thereupon recalled as a witness for the Commission and, having previously been duly sworn, further testified as follows:

Direct examination.

By Mr. Scoll:

Q. You have been previously sworn, Mr. Gates?

A. Yes.

Q. When were the assignments to Golden Gate Terminals and State Terminal made, do you recall?

A. Well, I think the—I am only guessing—State Terminal was made, I think, in about '31 to this particular operator, and the Golden Gate Terminals, I believe it was in '34. I am not sure of the dates.

Q. And when was the Islais Creek assignment made?

A. I don't remember that. It was made a long time before I went to work for the Board. I don't remember the dates.

Q. Now, no other assignments were made to Terminal Operators besides these three?

A. No, that's all.

Q. Now, except for Islais Creek, which assignment you say was made some time ago, was it the policy of the Board of Harbor Commissioners to assign space only to steam-[fol. 42] ship lines, except for these two?

A. That was the general policy.

Q. That was the policy up through 1931 when the State assignment was made?

A. No. The Pier 56 was assigned to a terminal operator previous to the assignment to the present operator—previous to the assignment to the present operator.

Q. When was that?

A. Well, that was also made before I went down to the Harbor but it was, I should say, in the late 20s.

Q. Now, you say that except for these assignments it has been the policy of the Board to assign space only for steamship lines?

A. That's right.

Q. Why was the change in policy made with respect to these terminals?

A. Well, there were certain terminals established on the East Bay who perform similar services and, as a matter of competition, it became necessary for the Board to establish these terminals on the San Francisco side.

Q. Will you describe briefly, but in a little more detail, just what competition it was that you had to meet?

A. We had to meet competition where certain shippers desired to concentrate the cargo at shipside for outgoing movements rather than bring it from outlying warehouses [fol. 43] to the ship.

Q. In other words, your East Bay competitors forced you to devise some way of avoiding split delivery and the switching charges; is that it?

A. Well, I don't quite understand your question as to what effect that has on the situation.

Q. We will get at this this way:—

A. It was more a matter of concentration of cargo at shipside.

Q. Now, let us get at it this way: The East Bay Terminals, if you can state this within your knowledge, serve all trades, do they not?

A. Yes.

Q. So that if a shipper who uses an East Bay Terminal has goods to go out intercoastally and coastwise and offshore or foreign, he can move all those goods to the one terminal?

A. That's right.

Q. Prior to the establishment of the terminals in San Francisco, was that possible in San Francisco?

A. No, because each particular line had space of its own at some pier.

Q. So you were faced with a situation where you, in order to compete with the East Bay, had to provide similar facilities?

A. That's right.

Q. Was low demurrage rates on the East Bay a factor [fol. 44] in the letting of these terminals?

A. The demurrage rates that were put into effect by the Board were the same in most cases as those in effect in the East Bay terminals.

Mr. Scoll: Read that answer, please.

(The answer referred to was read by the reporter as above recorded.)

By Mr. Scoll:

Q. You mean you put rates into effect to meet the East Bay competition?

A. That's right.

Mr. Vaughan: I understand, Mr. Scoll, that you are going into the question more fully at a later time?

Mr. Scoll: Yes, I am.

Mr. Vaughan: Do I understand that at that time we will have the actual rates produced?

Mr. Scoll: Yes.

By Mr. Scoll:

Q. Does the Board of Harbor Commissioners today absorb any split delivery and switching costs in order to meet East Bay competition?

A. It may absorb—yes, subsequent switches on the State Belt Railroad.

Q. Will you explain briefly why it is necessary for the Board to make such absorptions?

[fol. 45] A. Well, a carload of freight may come from an outside district, a certain portion of that to be shipped from one pier and the balance of it to be shipped from another pier and perhaps in another trade. It is necessary to, because of the fact that the Port of San Francisco is a major port and because we can't berth all the ships at one berth and at one pier—it was necessary for us to absorb those switches to compete with the terminals on the other side of the Bay where all of the cargo is assembled in one place.

Q. Do you similarly absorb any split delivery costs?

A. Very little; very little.

Q. Where?

A. At the State Terminals there are some absorptions. They amount to very little.

Q. And those are absorptions by the Board?

A. Yes.

Q. Now, have these assignments to State and Golden Gate been filed with the Maritime Commission under Section 15 of the Shipping Act of 1916?

A. Not to my knowledge.

Mr. Scoll: That is all.

Cross-examination.

By Mr. Kilkenny:

Q. Mr. Gates, with reference to the establishment of the terminals, is it a fact that they were established to give a [fol. 46] needed service to shippers?

A. I don't know that I can answer that question except to say that the Port of San Francisco has always given all

of the services that were needed in this particular district.

Q. Well, some of those services that you have spoken of were not given prior to the time the East Bay Terminals were established, is that right?

A. No, not that type of service.

Q. And was that type of service demanded at that time?

A. Not to my knowledge.

Mr. Kilkenny: That's all.

Redirect examination.

By Mr. Scoll:

Q. Is there any connection between the car loading and unloading charges at other terminals that Mr. Gerin referred to and the absorptions that you have just testified with respect to the split deliveries?

A. No, no connection.

Q. And switching costs?

A. No connection.

Mr. Scoll: Thank you.

Recross-examination.

By Mr. Somers:

Q. I should like to ask Mr. Gates if the Islais Creek Grain Terminal was constructed and put into operation to meet a competitive situation in the East Bay?

[fol. 47] A. Well, Mr. Somers, that terminal was established a long time before I went down to the harbor and I am not familiar with the circumstances.

Q. Then we shall come down to that at a later date. About the present schedule of charges at the Islais Creek bulkhead demurrage charges, are those to meet a competitive situation in the East Bay?

A. They are to meet a competitive situation all over the country, I believe; all over this vicinity.

Mr. Somers: That is what I wanted to know.

Examiner Basham: You are excused.

(Witness excused.)

Mr. Scoll: Is Mr. McCrone here now?

Mr. McCrone: Yes.

DAY MCCRONE was thereupon called as a witness for the Commission and, having been first duly sworn, testified as follows:

Direct examination.

By Mr. Scoll:

Q. Would you tell the reporter your full name, please?
A. Day McCrone.
Q. Are you an official of Golden Gate Terminals?
A. Yes.
Q. What is your position?
[fol. 48] A. I am the general manager.
Q. How long have you been general manager?
A. Since the inception of the company in 1936.
Q. Golden Gate Terminals operates a terminal at Pier 45 in San Francisco, is that correct?
A. That is correct.
Q. How long has that been in operation?
A. Since 1936, the first of August.
Q. And you hold an assignment from the Board of Harbor Commissioners?
A. We do.
Q. How long have you held that assignment?
A. Since that time.
Q. Golden Gate Terminals is a private corporation?
A. It is a partnership. It is not a corporation.

Mr. Scoll: It is a partnership.
Mr. Westlake: I can't hear the witness, Mr. Examiner.
The Witness: A partnership.

By Mr. Scoll:

Q. Does Golden Gate establish, or has it established certain charges for the furnishing of the terminal services at Pier 45?
A. Yes, we have.
Q. And what are those charges?
[fol. 49] A. They are the same as generally applied around the Bay district.
Q. Just describe them a little more in detail?
A. We have a tariff on file with the State Railroad Commission here.
Q. You don't collect tolls or dockage or demurrage at your terminal do you?

A. We do not.

Q. That is collected by the Board of Harbor Commissioners?

A. That is correct.

Q. However, you publish those in your tariff as a matter of information?

A. That is correct.

Q. And the space which you rent under the assignment that you hold is confined to office space only?

A. Well, the whole terminal property is assigned to us on a 30-day lease proposition.

Q. The rent you pay, you pay only for the office, though?

A. That is correct.

Q. You solicit terminal business the same as any other private terminal in the Bay?

A. I think we do, yes.

Q. And do you consider yourselves in competition with the East Bay Terminals, such as Howard, Encinal, Oakland?

A. I think we are, yes.

Q. Do you compete with State Terminal?

[fol. 50] A. Yes.

Q. I show you a document entitled "Non-negotiable Receipt, Golden Gate Terminals."

A. Yes, that's ours.

Q. That document is issued by you?

A. That's right.

Q. This is a duplicate, is it?

A. That's the original.

Q. This is the original?

A. This is the original.

Mr. Scoll: I offer it for identification, or I will introduce it now. I will put it right in the record.

Examiner Bashman: It will be received as Exhibit No. 4.

(The Non-negotiable Receipt was marked "Commission's Exhibit No. 4" and received in evidence.)

By Mr. Scoll:

Q. To whom are such receipts issued?

A. Sometimes to banks who have loaned money on cargo; generally to the owners of the cargo that is placed on storage.

Q. In any case, it is issued to a person who owns or who has the legal right to ownership?

A. Yes.

Q. Before you issue a receipt you require proof that the [fol. 51] person owns the cargo?

A. Naturally.

Examiner Basham: These are what are known as "Warehouse Receipts?"

The Witness: That's right.

Examiner Basham: Are they negotiable?

The Witness: No. That is non-negotiable.

By Mr. Scoll:

Q. Do you issue a negotiable receipt?

A. No, we do not.

Mr. Kilkenny: What was that answer.

The Witness: No.

By Mr. Scoll:

Q. Do you publish a warehouse tariff?

A. No.

Q. Do you hold a license of public convenience and necessity under the California State Law to operate a warehouse?

A. No.

Q. The warehousing charges that are collected under that receipt are payable directly to the Board of Harbor Commissioners, are they, in most cases?

A. In every instance.

Q. Does that apply to both consignees who have established credit with the Board as well as those who have not [fol. 52] established credit, or is there a separate treatment as far as charges are concerned?

A. I wouldn't know that.

Q. You say you are the General Manager of Golden Gate?

A. Yes, also a partner.

Q. And you don't know what the arrangements are for paying the storage charges under those receipts?

A. Well, the arrangements were made with the Board of Harbor Commissioners.

Q. Do you ever collect any of the charges for the Board of Harbor Commissioners?

A. None.

Q. They are always paid direct?

A. That is correct.

Q. Does the Board of Harbor Commissioners pay you any compensation in connection with that storage?

A. None.

Q. The cargo shipments would be stored on space which you hold under assignment from the Board, is that correct?

A. I didn't get that.

Mr. Scoll: Read it.

(The question was read by the reporter as above recorded.)

The Witness: That is correct.

By Mr. Scoll:

[fol. 53] Q. But not on space for which you pay rent?

A. Well, we don't pay rent except on the office space.

Q. Who is liable for loss or damage to the goods stored under that receipt?

A. Ourselves, the Golden Gate Terminals.

Q. Have you paid loss or damage claims?

A. Yes.

Q. And, as far as you know no loss or damage claims have ever been paid by the Board on cargo stored on your premises?

A. I don't believe they have.

Q. What trades do you handle freight for?

A. All trades.

Q. That includes intercoastal, offshore and foreign?

A. That's right.

Q. And coastwise to some extent?

A. Yes, a small amount.

Q. Is Golden Gate a member of the Marine Terminal Association of Central California?

A. It is.

Mr. Scoll: That is all, thank you.

Cross-examination.

By Mr. Kilkenny:

Q. Mr. McCrone, you have no assignment for the piers, have you?

A. Just to operate, that is all.

[fol. 54] Q. Well, have you any written assignment on Form 28?

A. I believe we have.

Q. For the whole pier?

A. I am not sure. I would have to look that up. I am not positive of that.

Q. You are not sure of that?

A. No, I am not.

Q. You have an assignment on Form 28 for your office space?

A. You are correct. That's right.

Q. Is it not a fact that you do not have any written assignment for the pier?

A. I believe you are correct. It has been so long ago since I have read that, I have forgotten.

Q. To the best of your knowledge that is correct?

A. That's correct.

Mr. Scoll: No more questions.

By Mr. Townsend:

Q. In connection with the operation of Pier 45 do you specialize in any particular types of commodities, or do you handle all commodities?

A. We handle all commodities.

Q. Is there any one or two types of commodities that you handle predominantly?

A. Yes. We handle a great deal of Oriental commodities. That is our major operation.

[fol. 55] Q. What do you mean by that?

A. Cargo going to the Orient and inbound cargo from the Orient.

Q. Does that come in by Oriental vessel and go out by coastal vessel, or does it stop here?

A. Sometimes it comes in by Oriental boats and goes out by coastal, but our volume of that is not great.

Mr. Townsend: That is all, thank you.
Examiner Basham: You are excused.

(Witness excused.)

Examiner Basham: We will have a five-minute recess.

(At this point a short recess was taken, after which the proceedings were resumed as follows:)

[fol. 56] After Recess

Examiner Basham: I just want to announce that there will be no free copies of this transcript, and if you wish one, it will be necessary to arrange for it with the reporter.

You may proceed, Mr. Scoll.

Mr. Scoll: Mr. Merritt D. McCarl.
Mr. Kilkenny: I would like to ask a question of Mr. McCrone.

Day McCrone was thereupon recalled as a witness for the Commission and, having been previously duly sworn, further testified as follows:

Further cross-examination.

By Mr. Kilkenny:

Q. Mr. McCrone, under the arrangement you have with the Board of Harbor Commissioners the Board can at any time allow other vessels to dock at that pier where you do business, is that correct?
A. That is correct, yes.
Q. You have no preference?
A. No preference on assignments.

Mr. Kilkenny: That is all.
[fol. 57] Examiner Basham: You may be excused.

(Witness excused.)

Mr. Scoll: Mr. McCarl, please.

MERRITT D. MCCARL was thereupon called as a witness for the Commission and, having been first duly sworn, testified as follows:

Direct examination.

By Mr. Scoll:

Q. Mr. McCarl, will you tell the reporter your name.

A. Merritt D. McCarl; Traffic Manager and Assistant Port Manager of Oakland.

Q. The Port of Oakland is sometimes referred to as the Board of Port Commissioners of the Port of Oakland, is that correct?

A. That is correct, yes.

Q. How long have you been the Traffic Manager of the Port of Oakland?

A. Since its inception about 13 years.

Q. You were subpoenaed in this proceeding, were you not?

A. Yes, sir.

Q. Will you describe briefly the facilities operated by the Port of Oakland.

A. The principal terminal facilities are the Outer Harbor Terminal, Grove Street Terminal, Market Street Terminal, Ninth Avenue Terminal, Livingstone and Dennison Street [fol. 58] Piers; and the Airport, of course, comes under the jurisdiction of the Board, but I guess you are not interested in that at this time.

Q. No, I am not.

A. Also there are some leases. There is a lease arrangement with the Howard Terminal; also some lease arrangements with private lumber terminal operators.

Q. Those facilities were built by the City of Oakland, were they?

A. Yes, they were.

Q. They are managed by the Board of Port Commissioners, is that correct?

A. Yes, sir.

Q. And the Board of Port Commissioners, how are the Commissioners selected?

A. They are appointed by the Mayor, confirmed by the Council.

Q. These facilities you operate are deep water facilities that compare with any of those on the Bay, is that correct?

A. That is correct. I think they the a little better.

Q. They are designed for the accommodation of vessels that operate coastwise, intercoastal, offshore and foreign trades?

A. That is correct.

Q. The facilities which are not leased, such as Howard facilities, are operated directly by the Board of Port Commissioners?

A. Operated directly, those that are not leased; yes.

[fol. 59] Q. Does the Port publish a tariff?

A. It does.

Q. Is that tariff on file with the Railroad Commission of the State of California?

A. There is a copy furnished the Commission for this information?

Q. But it is not filed under the statute?

A. Not officially, no.

Q. Now, the Port establishes the rates and charges applicable to the terminal's services, does it not?

A. That is right.

Q. And applicable to terminal facilities which are leased as well as those which are operated?

A. Not those that are leased. Howard terminal publishes its own tariff.

Q. But the rates and charges have to be approved by the Port, do they not?

A. Not necessarily for Howard Terminal. Some of the other terminals, like Albers Brothers, follow the Port of Oakland Tariff, but I wouldn't say for sure that Howard Terminal's rates have to be approved by the Board. There is some question about that, I believe.

Mr. Jones: I think the lease will speak for itself on that.

By Mr. Scoll:

Q. What property does the Port lease to McCormick [fol. 60] Steamship Company?

A. There is just an assignment there; half of the shed area at Ninth Avenue Terminal.

Q. And that Ninth Avenue terminal is adjacent to piers that are operated by the Board?

A. The Port operates directly one half of that facility and the balance of it as a lumber terminal.

Q. When was this lease or assignment made?

A. About six, seven years ago.

Q. Excuse me. I think it was 1932.

A. 1932, yes.

Q. Do you have any other leases to steamship lines?

A. No, that is the only one. The "Assignment," I should say, instead of a "lease."

Q. I will show you a document entitled "Agreement" which purports to be an agreement made the first day of March, 1932, by and between the Board of Port Commissioners acting for the City of Oakland, and the McCormick Steamship Company. Is that the agreement under which the McCormick Steamship Line holds the Ninth Avenue pier?

A. That appears to be the correct copy.

Q. You had better look it over and make sure.

A. I see it bears initials on there and it looks very familiar. (Examining agreement.) Yes, I would say that that is correct.

[fol. 61] Mr. Jones: May I see it, please?

(The agreement was handed to Mr. Jones.)

By Mr. Scoll:

Q. That is a correct copy, is it not?

A. Yes, sir.

Mr. Scoll: I would like to offer it for identification at this time, Mr. Examiner.

Examiner Basham: It will be exhibit No. 5 for identification.

(The agreement was thereupon marked for identification "Commission's Exhibit No. 5.")

Mr. Scoll: I would like to read Clause No. 2 from this agreement into the record.

Mr. Jones. Has it been received in evidence yet?

Examiner Basham: For identification only.

Mr. Scoll: Well, would you rather I offer it now?

Mr. Jones: Yes, because I——

Mr. Scoll (Interrupting): I will offer it for the record.

Mr. Jones: Subject to my continuing objection, Mr. Examiner.

Examiner Basham: It will be received.

(The agreement referred to, heretofore marked for identification "Commission's Exhibit No. 5," was thereupon received in evidence.)

[fol. 62] Mr. Scoll: I am now reading from clause 2:

> "The Steamship Company shall use said pier shed space and adjacent rear and front platforms exclusively for the purposes of carying on its steamship operations in receiving, handling and dispatching cargo transported by such vessels as it shall own and control, or by vessels for which at the date of this agreement it is the regularly constituted shipping agent, it being provided, however that in the event that the steamship company shall desire to use any part of said space for the handling of the cargo of any other vessel or other steamship line which it shall become the agent therefore, it shall so advise the Board in writing of such intention, and exhibit to the Board such evidence as shall be necessary to establish such agency; provided, however, the steamship company shall not engage in competition with the Port of Oakland to take over any of the business it may control or handle."

By Mr. Scoll:

Q. Were you the traffic manager of the Port of Oakland at the time this agreement was executed?

A. Yes, I was.

Q. Now, you were familiar with this agreement at the time it was executed, were you not?

A. Yes.

Q. Did you see it?

[fol. 63] A. Yes.

Q. Will you state for the record, so far as you can recall, what was intended to the Port to be accomplished by that last clause I read, which I shall repeat: "* * * Provided, however, the steamship company shall not engage in competition with the Port of Oakland to take over any of the business it may control or handle."?

Mr. Jones: Just a moment, your Honor. Mr. Examiner, it seems to me that that clause speaks for itself. The intent

of Mr. McCarl, who is, after all, as I am, merely an employee of the Board, does not bind the Board. It does not bind the McCormick Steamship Company. These leases are, as of course, as a matter of law, made by the Board by ordinance. It is a legislative intent, and Mr. McCarl is not able to tell what was in the Board's mind at the time that lease was made. Furthermore, the document speaks for itself and is subject to judicial construction.

Mr. Scoll: Mr. McCarl was the traffic manager and would be most interested undoubtedly in clauses of this kind. He stated that he was traffic manager of the port at the time the lease was drawn. He is familiar with it and undoubtedly he knows what was intended to be accomplished by that clause. If he does, I would like to have him so say.

Examiner Basham: The witness should answer if he knows.

[fol. 64] A. The purpose was to restrict tonnage handled by McCormick at that facility to the tonnage that was carried by its own vessels and not to set them up as a terminal operator in competition with the Port of Oakland.

Mr. Scoll: I shall now read from the lease, Clause 4, page 2:

> "(4) In carrying on its operations upon said pier, the said Steamship company shall assess and collect charges for all services performed by it at the same rates and charges as are prescribed from time to time by the regularly adopted tariff published by the said Board. Said company shall, in good faith, collect said charges from all shippers and others with whom it shall carry on its business. Nevertheless, nothing in this agreement shall be understood or construed to constitute said Steamship company as terminal operators."

I would like to read into the record Clause 31 of the lease on page 10:

"(31) In further consideration of the granting to the Steamship Company of the privilege of the use of said pier space as herein provided, the steamship company expressly undertakes and agrees that all discriminating rates and differentials against the Port of Oakland, or any of its publicly operated facilities, shall be removed from all

tariffs under the control of the company, as well as from [fol. 65] the tariffs of any steamship line or vessels for which it shall use the said pier as steamship agents, which tariff it may be enabled to control, and the said steamship company will conscientiously use its best efforts with any conference to which it may belong to place the Port of Oakland on a strict parity with the Port of San Francisco, and will endeavor to the extent of its ability to increase the amount of tonnage handled by it through the Port of Oakland according to the true spirit and purposes of this agreement."

By Mr. Scoll:

Q. Now, I will ask you what was intended to be accomplished by that last clause, which I shall quote again:

> "And will endeavor to the extent of its ability to increase the amount of tonnage handled by it through the Port of Oakland according to the true spirit and purposes of this agreement."

A. That was to require them to remove any differentials against the Port and to permit tonnage which should normally pass through the Port of Oakland to move in that manner.

Q. It says "endeavor to the extent of its ability to increase the amount of tonnage handled by it through the Port of Oakland." Doesn't that have a little broader meaning than you just attributed to it?

A. Some time back there was a tendency to route traffic through more or less unnatural channels and divert cargo [fol. 66] from the Port that we felt should normally move through the Port; also in certain trade routes there were what we considered discriminatory rates against the Port.

Q. What cargo did you at that time think should normally be routed through Oakland?

A. Their headquarters being in San Francisco, there seemed to be a tendency to have cargo routed through San Francisco where they were paying rental on a facility regardless of the amount of tonnage that moved through that facility to move through San Francisco, rather than through Oakland; and also possibly some movement through other ports: Alameda, Richmond.

Q. And you thought that all of that should go through Oakland?

A. That's right.

Q. And that applied, did it not, to cargo handled not only in McCormick Steamship Line vessels, but also the vessels of any other steamship lines for which it used the terminal as agent?

A. Well, we had in mind particularly the McCormick Steamship Line. We didn't expect them particularly to handle any other vessels as agents, although that was put in there in case they did. It was used for that purpose.

Q. Does the Board have any similar agreements as this with any other steamship lines.

A. No, sir.

[fol. 67] Q. Has this agreement been filed with the Maritime Commission under Section 16 of the Shipping Act of 1916?

A. No, sir.

Q. Will you describe the facilities which the Port leases to Albers Brothers Milling Company?

A. That is an old lease of long standing. It was entered into a number of years ago and covers facilities—a facility operated by the Albers Brothers Milling Company for the making of cereals and bringing the materials into their facility to be used in the making of these cereals, and shipping them out; also for storing such materials as are used by them and shipped by them.

Q. Where is the property located?

A. The Outer Harbor area.

Q. What does it consist of?

A. It is a dock and mill, storage tanks, storage facilities.

Q. There are facilities there for berthing of vessels?

A. Yes.

Q. I show you now a printed document entitled "Notice of Intention to Make a Lease to the Highest Responsible Bidder, Covering Certain Land In or Near the Outer Harbor Area of the City of Oakland," which has written on it in ink in the upper right hand corner, "Albers Bros. Milling Co."

Mr. Jones: I will stipulate, Mr. Scoll, that that does contain the Albers' lease.

[fol. 68] Mr. Scoll: Thank you, Mr. Jones. That, then, except for the fact that it is unsigned, is the form of the lease which was signed by the Albers Milling Company?

Mr. Jones: That is true; the one presently in effect.

By Mr. Scoll:

Q. Is the Albers lease, of which this is a printed copy, now in effect?

A. It is.

Mr. Jones: I so stipulated.

Mr. Scoll: Oh, I am sorry.

Mr. Jones: It is presently in effect.

Mr. Scoll: I will offer it for the record.

Mr. Jones: Is that being offered in evidence?

Mr. Scoll: Yes.

Mr. Jones: At this time, Mr. Examiner, I must object to the introduction of this lease or of any other lease made by the Board of Port Commissioners to a person who is not within the definition "Other persons," subject to the Act in Section 15. I understand that this portion of the inquiry is directed only to Section 15. Is that true?

Consequently, any lease which the City of Oakland might have made to a shipper or a manufacturer who does not engage in furnishing terminal facilities as a public wharfinger is altogether beyond the power of this Commission in so [fol. 69] far as the requirements of filing in Washington is concerned. I understand that the only purpose for which this is offered is to show a violation of Section 15. Therefore, on the ground that it is immaterial, I object to its acceptance in evidence.

Mr. Scoll: Before the Examiner rules on that——

Examiner Basham: Which party to this lease do you contend is not a party subject to the Act?

Mr. Jones: Albers. Of course, my continuing objection on the part of the Board also runs to this. But I think that any terminal operator under Section 15 may make any agreement with the shipper that is not covered by Section 15. Section 15 relates only to the so-called Conference Agreement.

Examiner Basham: The objection will be overruled. It will be received in evidence as Exhibit No. 6.

(The printed copy of the lease referred to was marked "Commission's Exhibit No. 6," and received in evidence.)

By Mr. Scoll:

Q. I am reading to you now a clause from sub-paragraph (e) of paragraph 3 of this lease, which reads as follows:

> "Lessee shall and will in good faith, and with all reasonable diligence and consistency use its best endeavors and all practical means to use the terminal facilities or said leased premises to its full capacity [fol. 70] to cooperate with lessor in securing business, traffic and shipments of freight for and through municipal terminals operated by Lessor to the end that it may aid in promoting commerce and shipping of the Port of Oakland."

I will ask you, Was the purpose intended to be accomplished by that clause the same as the similar one we discussed in connection with the McCormick lease; that is, to promote the commerce of the Port of Oakland?

A. In a general way. That is a general provision and it wasn't to be intended to have them use their influence other than the routing of their own cargo to use their reciprocity, purchase power, and that sort of thing to try to influence tonnage through the Port.

Mr. Scoll: I have no further questions of you at this moment, Mr. McCarl.

Mr. Examiner, I want to recall Mr. McCarl in a few moments, but I would like now to put on another witness.

Mr. Jones: I would like to ask just one or two questions, Mr. Scoll.

Cross-examination.

By Mr. Jones:

Q. Mr. McCarl, the Board of Port Commissioners of the City of Oakland is a department of that city, is it not?

A. Yes, sir.

[fol. 71] Q. And the city, of course, is a municipal corporation of the State of California?

A. Yes.

Q. The powers of the Board of Port Commissioners are set up, are they not, in the charter of the city of Oakland?

A. Yes.

Q. Could you tell this Commission, Mr. McCarl, how leases are made by the Board of Port Commissioners?

A. Through public bidding.

Q. And after the bids are received what happens, if you know?

A. The lease is allotted to the highest bidder; the highest responsible bidder.

Q. By what kind of action by the Board? In other words, by ordinance, resolution, motion, or what?

A. By ordinance of the Board.

Mr. Jones: That is all.

Mr. Connolly: Mr. Examiner, in order to protect any right that might accrue to Albers Brothers Milling Company later on when briefs are filed, I would like to ask your permission to join in the objection of Mr. Jones in regard to this particular lease which was offered as exhibit No. 6. I understand the objection has been overruled.

Examiner Basham: Yes.

Mr. Connolly: But may that be granted?

Examiner Basham: It will be noted.

(Witness excused.)

[fol. 72] Mr. Scoll: Mr. Edwin Doyle.

Mr. Connolly: Mr. Doyle is our San Francisco Manager; that is, for Albers Brothers Milling Company. He is not familiar with the dock operations in Oakland, and I asked Mr. Slade here for permission to substitute for Mr. Doyle.

C. S. Connolly was thereupon called as a witness for the Commission and, having been first duly sworn, testified as follows:

Direct examination.

By Mr. Scoll:

Q. What is your name, please?

A. C. S. Connolly.

Q. What is your occupation, or what is your position with Albers Milling Company, Mr. Connolly?

A. Western Traffic Manager.

Q. And how long have you held that position?

A. Well, I think the last six or seven years. I was traffic manager here before that time and we had an amalgamation of certain companies, and then I was assigned the title of Western Traffic Manager and moved to Seattle.

Q. Are you now located in Seattle?

A. Yes.

Q. Are you familiar with the operations at the terminal [fol. 73] and other facilities that are operated by Albers Milling Company in the Port of Oakland?

A. I am.

Q. Will you describe the operations that take place at that facility, briefly?

A. The facility is largely a private facility devoted exclusively to the handling of grains and other commodities usually handled by a large milling company. We have machinery there for the manufacture of various feeds, cereal food preparations, flour and machinery incident to general milling operations.

Q. And those milling operations take place on the facility which you lease from the Port of Oakland?

A. That is correct.

Q. Have you similarly handled inbound and outbound freight of your own at that facility?

A. We do.

Q. That is, freight of the Albers Milling Company?

A. Yes, sir.

Q. Now, in addition to Albers Milling Company freight is the freight of other concerns also handled at that terminal facility?

A. At the present time there is one other concern, I wouldn't say handle their freight through the facility, but that concern rents two storage tanks from the Albers Brothers Milling Company at a fixed rental per month, and they [fol. 74] bring into the wharf adjacent to those storage tanks, which are really not I wouldn't say that they are on the wharf. They are located on the ground east of the facility itself. They berth their ships in such a position so that liquid soda can be discharged from the ship in the tanks.

Q. And so that they use the dock facility for the discharge of that soda?

A. Yes. That's necessary in order to tie up so they can——

Q. (Interrupting:) What is that company? What is the name of that company?

A. Well, I wonder—not that I don't want to put it in the record here, but it is more or less a private—we are not operating as a public utility to any extent, and it is really a private transaction between Albers Brothers Milling Company and this other company, and I don't know to what extent they might object to my divulging this information. I would be glad to give it to you "off the record."

Q. Well, maybe we will come back to it. Will you identify Interstate Terminals?

A. About seven or eight years ago the corporation was organized under the laws of the State of California and that corporation still exists, although it is inoperative at the present time. The name of the corporation is Interstate Terminals Limited.

[fol. 75] Q. Now that Interstate Terminals, Limited, was organized by Albers Milling Company?

A. Well, I believe that's a correct statement. The incorporators were various people connected with the Albers Brothers Milling Company.

Q. And that corporation was organized subsequent to the lease which has been introduced as exhibit No. 6, subsequent to the time that lease was made?

A. Do you happen to have the date on that lease?

Mr. Jones: 1934.

The Witness: I forgot that date.

Mr. Jones: 1934.

The Witness: Yes. The Interstate Terminals, Limited, was incorporated prior to the time of this lease.

By Mr. Scoll:

Q. Who holds the stock of Interstate Terminals, do you know?

A. Yes.

Q. Who does?

A. Well, Albers Brothers Milling Company hold, I think, all but four or five directors' shares.

Q. Now, you say that Interstate Terminals, Limited, is inoperative at the present time?

A. That's right.

Q. Does it still hold its charter of incorporation?

A. It does.

[fol. 76] Q. As a corporation?

A. It does.

Q. Has it been dissolved?

A. It has not.

Q. What I mean by "Inoperative," I mean that Interstate Terminals, Limited, as such, has no operating organization. They perform no functions at the present time whatsoever.

Q. What functions did it perform before it became inoperative?

A. Well, it made a feeble effort to go into the terminal business in Tacoma and, oh, it lasted about a year there. It operated rather extensively at Portland, Oregon. Our legal staff in the east thought that it would be better to operate in Oregon using the name "Interstate Terminals." That is, Albers Brothers Milling Company do a direct operation through the name "Interstate Terminals" and that is what they are doing there now. So the corporation, as such, no longer operates.

Q. Does Interstate Terminals, Limited operate at the facilities that are leased by Albers Milling Company?

A. No, sir.

Q. Never?

A. No, sir.

Q. Does any other company whose stock is owned or controlled by the Albers Company operate a terminal facility on this property?

[fol. 77] A. Well, I don't know how to answer that question. I want to be absolutely honest with you, of course. The Albers Brothers Milling Company is owned in turn by the Carnation Company, and I imagine that any operation over on that property would be for one of those corporations.

Q. Then let me ask you this: Are any public terminal facilities operated at this property that is under the Albers Brothers lease?

A. No, they are not. We do not hold ourselves out to the general public in any way, shape or form to accept business.

Q. Now, what concerns besides the Albers Brothers Milling Company and Carnation do you handle cargo for over this facility?

A. The one concern which I said I would be glad to give you the name "off the record."

Q. That is the only one?

A. Yes, sir. There was, I believe, an instance where one grain company had some corn here some time ago and they put in our facility. It was a thousand tons, and we had already purchased 700 tons of that corn. It was more or less, I would say, a private transaction.

Q. And no terminal services have ever been rendered at that facility for the general public at any time that Albers has held this lease?

A. Well, I examined yesterday when I arrived here I examined the records that were available. Those records [fol. 78] commenced with 1937. I will say this: That I recall one or two instances of a strictly private nature. I recall one instance of a large block of canned goods. We had some space there. That was about eight years ago. We had some space and we took those canned goods in on a storage basis. We charged so much for it, with the approval of the Court.

Q. What was the occasion for that?

A. The occasion was simply the fact that we had space there at the terminal not being used at that particular time for grain and other commodities, and we were approached by another party who wanted to store some canned goods, and we took it in.

Q. Were you approached by them, or did you approach them?

A. No, we were approached by them.

Q. Are such requests frequently made to you?

A. Very infrequent.

Q. But when such requests are made, if you have the space, why, you rent it out to them, do you?

A. Well, I would say that "Yes; we would." If we had the space we would try to rent it with the approval of the Port Commission.

Q. Do you get the approval of the Port Commission every time you rent out storage space or use your facilities for the unloading or loading of cargo of other concerns?

A. We do, because the lease provides that we shall get permission before we can handle any goods other than our [fol. 79] own goods.

Q. When was the last time you used the facilities for some other concern than Albers or its affiliates?

A. Well, I believe the last time was in January of this year when some of the liquid soda was discharged into the tanks.

Q. Do you have a contract with those people?

A. Well,——

Q. (Interrupting:) A written contract?

A. I don't believe so, no. I don't believe we have any written contract: I haven't made a search, however, for any such document. But my understanding is that we merely agreed to rent the tanks for so much a month.

Q. Well, is that——

A. (Interrupting:) From month to month.

Q. Is that just an oral arrangement?

A. I don't know whether there are any letters or anything of that kind in the files or not. I didn't make the arrangements myself.

Q. Would you find out for us?

A. Yes.

Q. And insert it in the records at a later time?

A. Yes.

Examiner Basham: We shall adjourn now until two o'clock.

[fol. 80] (Whereupon, at 12:30 p. m., a recess was taken until 2:00 p. m.)

[fol. 81] Afternoon Session 2:00 P. M.

C. S. Connolly resumed the stand and further testified as follows:

Direct examination (Resumed).

By Mr. Scoll:

Q. Now, Mr. Connolly, when cargoes for accounts others than Albers Brothers are discharged at the wharf, are service, dockage and tolls assessed as required by the tariff of the Port of Oakland?

A. They are.

Q. Who bills the shippers or consignees and the line for those charges?

A. We bill the charges against the consignee or whoever is liable for the charges, and then we——

Q. (Interrupting:) Who do you mean by "we"?

A. Albers Brothers Milling Company.

Q. You mean, Albers themselves bill the service charges against the vessel?

A. Well, we bill whatever the appropriate charge is; the tolls, the dockage and any service charge. We will bill that service charge against the vessel and bill the wharfage and tolls, or the dockage, against the vessel, and the tolls against the consignee.

[fol. 82] Q. Now, you are sure that the billing is done directly by Albers?

A. Yes.

Q. Was it formerly done by Interstate Terminals?

A. Well, probably anticipating what you have in mind, I explained that we formed a corporation in California known as the Interstate Terminals, Limited.

Q. Why did you form that corporation?

A. Well,——

Q. (Interrupting:) Let me ask it this way: Albers Milling Company is not a California corporation, is it?

A. No, sir.

Q. And Interstate Terminals, Limited is a California Corporation?

A. That's right?

Q. Now, as a matter of fact, weren't the charges, service, dockage, toll charges, actually billed by Interstate to the respective carriers and consignees?

A. Well, now, what period of time are you discussing?

Q. Well, I am discussing the period of time when Interstate Terminals, Limited, was operating.

A. I testified that they never operated here in California.

Q. So that at all times all those charges have been billed directly by Albers?

A. Yes. But I want to explain something here, because undoubtedly you have some information that you are predi- [fol. 83] cating these questions upon. As I started to say, the corporation known as Interstate Terminals, Limited, was incorporated in California and at one time we had various forms printed and it may be that at some time or another charges were billed on these particular forms. I don't

deny that. In fact, I believe they were so billed. But I think that the correct way would possibly have been to use stationery of Albers Brothers Milling Company since Interstate Terminals, Limited, was not operating in any way here as a corporation.

Q. Well, now, when cargoes are discharged at Albers' wharf for other accounts, who performs the clerking service involved in the discharge?

A. At the present time on this liquid soda, of course, there is no clerking and the same would be true on bulk grain. On any other cargo that may have been discharged there in the past, as far as I know, the Steamship Company itself did the clerking. We may have put a checker on at their request or something of that kind.

Q. Would Albers furnish any service whatever in connection with the discharge of a vessel that was unloading for another account than Albers?

A. They would furnish lights and water for the vessel.

Q. But no employees engaged in handling the cargo?

A. No. We couldn't do that because our men can't do that kind of work.

[fol. 84] Q. Well, now, when a vessel calls at Albers, occasionally—strike that out, please.

When a vessel calls to discharge cargo at Albers' wharf for Albers Company, does it occasionally happen that they would sometimes discharge other cargoes for other accounts at the same time?

A. I believe there have been one or two instances in the last two years. In one instance a boat came to the dock with corn in bulk, which we were the consignee of, and—well, I wasn't there, but I have been informed that it was necessary to take out a small amount of freight in order to get at the corn, and that we were allowed to do that after obtaining permission from the Port of Oakland authorities.

Q. How often do instances like that occur?

A. As far as I know, there have been but two in the last two years.

Q. Now, Albers has bulk handling facilities for handling grain?

A. Yes, sir.

Q. Well, now, have you ever handled grain for any other account than your own?

A. Yes, we have.

Q. For whom?

A. I believe the last two consignments were handled for [fol. 85] the Continental Grain Corporation.

Q. Now, are the usual service charges, dockage charges, assessed against the vessel in those cases?

A. They are.

Q. Is there a charge assessed against the cargo, too, such as a toll?

A. Yes, there is a toll assessed against the cargo.

Q. When was this Continental assignment handled?

A. Well, it has been within the last six months, I think; very recently.

Q. Do instances like that occur very often?

A. Well, in my examination of the records for three years, those two shipments for the Continental Grain Company were the only two I found.

Q. And the charges are billed and collected by Albers?

A. That's right.

Q. Have you ever had occasion to consider whether Albers Brothers Milling Company was authorized under the laws of the State of California to handle cargoes for other concerns than itself at this wharf?

Mr. Jones: Mr. Examiner,——

A. (Interrupting:) I don't understand the question.

Mr. Jones: (Continuing:)——that calls for a conclusion of the witness.

Mr. Scoll: I did not ask him for a conclusion. I asked [fol. 86] him if he ever had occasion to consider.

Mr. Jones: What is the purpose of it? To get at the conclusion, is it not?

Mr. Scoll: I will get at it another way.

By Mr. Scoll:

Q. Are you familiar with the report of the California Railroad Commission in case No. 4090?

A. I am.

Q. Have you had occasion to read the portion of that which relates to Interstate Terminals and Albers Milling Company?

A. I haven't read it in the last year, but I think about two years ago or a year or so ago I read it.

Q. Let me show you Decision No. 29171 of the California Railroad Commission in Case No. 4090, page 15. I will

ask you to just look over the statement that is made there with respect to Interstate Terminals and Albers Brothers Milling Company.

A. (Reading decision.)

Q. Are the statements made in the decision of the California Commission correct as to stating the facts?

A. No.

Q. In what particular are they wrong?

Examiner Basham: What are you talking about, Mr. Scoll?

Mr. Scoll: I am talking about the decision of the Cali-
[fol. 87] fornia Railroad Commission, which I will offer in evidence at this time.

Examiner Basham: Do you want to offer it now?

Mr. Scoll: Yes. I will offer it at this time and then the witness can testify from it.

Mr. Townsend: May I ask before that is passed upon, what is the purpose of the offer? For what purpose is this decision being offered at this time?

Mr. Scoll: To establish the relations between Interstate Terminals and Albers Brothers Milling Company.

Mr. Townsend: That is the only purpose?

Mr. Scoll: That is the only purpose.

Mr. Townsend: In other words, you are really offering, then, only that portion of the decision dealing with Interstate Terminals and Albers Brothers Milling Company?

Mr. Scoll: That is right. I might say that the decision will probably be used in connection with other issues in the case, and when we come to them we will refer to the specific parts of the decision. At that time, if you have any comments or objections that you want to make, we can handle them then.

Mr. Townsend: That is what I want clearly understood. In other words, at this time we are not passing upon the admissibility of any portion of this decision except in so far as it relates to Interstate Terminals and Albers Brothers
[fol. 88] Milling Company?

Mr. Scoll: That is right.

Mr. Townsend: May that be understood, Mr. Examiner?

Examiner Basham: Yes. That will be received as exhibit No. 7.

(The decision referred to was marked "Commission's Exhibit No. 7," and received in evidence.)

Examiner Basham: I wish you would identify the page in the record here to which you are addressing your questions.

Mr. Scoll: I believe I have, but I will identify it again.

By Mr. Scoll:

Q. Mr. Connolly, will you state in what respect the statements of the California Commission on page 15 of the decision referred to and introduced as exhibit No. 7 are incorrect?

A. In my opinion, the decision does not interpret my testimony in that case correctly. You, by offering that in evidence, wish to establish in the record here that Albers Brothers Milling Company handled the goods of their own—that is, where they were either shipper or the consignee—and that Interstate Terminals handled goods belonging to others. There is one commodity mentioned there: Soda Ash, and that the charges were billed by Interstate Terminals.

Now, I call your attention to the fact that the corporate [fol. 89] name "Interstate Terminals, Limited," is not used in that decision and Interstate Terminals is merely a name that has been used to identify the terminal over there. There are no employees of Interstate Terminals whatsoever there, nor were there any employees of Interstate there at the time mentioned in this decision. Every transaction that occurred was handled by employees of the Albers Brothers Milling Company, on the payroll of Albers Brothers Milling Company; and there was but one corporation operating that property, and that was the Albers Brothers Milling Company.

As I admitted here in the record, there is a possibility that stationery which had been printed at the time this other corporation was organized was being used in billing those charges. We had stationery printed at that time for a number of places, Oakland and Portland and Tacoma, but the corporation never functioned in Oakland.

Q. All I am trying——

A. (Interrupting:) And when I say "corporation," I mean the Interstate Terminals, Limited. And as far as Interstate Terminals is concerned in that decision, it merely means Albers Brothers Milling Company, because that is the only corporate identity or the only person of any kind, natural or artificial, that was over there on that property.

Q. All I am trying to get at, Mr. Connolly, are the facts.

A. That is what I am trying to give you, too. I have nothing to hide. I want to help you if I can.

[fol. 90] Q. But did Albers do business under the name of Interstate Terminals Company at any time? Did it use that name for any of its operations?

A. Only to the extent of billing those charges on this stationery which was printed and, if I remember correctly, that stationery contained the name "Interstate Terminals, Limited," as far as that goes.

Q. But it does not do it any longer? Albers does not do that any longer?

A. I wouldn't say that. For all I know, I haven't investigated personally to see whether these charges that I speak of having been billed by Albers Brothers Milling Company are actually on a bill head of Albers Brothers Milling Company, or whether they may be on some of these old bill heads of Interstate Terminals, Limited.

Mr. Scoll: I think that is all I have, Mr. Connolly.

Examiner Basham: Any questions? (No response.) You may be excused.

(Witness excused.)

Mr. Scoll: Mr. McCarl, please.

[fol. 91] Merritt D. McCarl was thereupon recalled as a witness for the Commission and, having been previously duly sworn, further testified as follows:

Direct-examination.

By Mr. Scoll:

Q. You have been sworn, have you not, Mr. McCarl?

A. Yes, sir.

Q. Will you describe briefly the facilities of the Port of Oakland that are leased to the Howard Terminal?

A. The outer portion of the pier structures on the quay wall facility at the foot of Market Street, they are owned by the city and the city has entered through the Port Department a lease arrangement for the operation of those facilities with the Howard Terminal. The quay wall portion is on a year to year basis, and the other two leases are long time standing. The City gets a portion of the dockage

and tolls from the pier leases, and all the dockage and tolls from the quay wall facilities.

Q. I will show you a document which purports to be an agreement between the city of Oakland and the Howard Company. Will you look that over and tell me whether that is the agreement under which the Howard Terminals hold with the city of Oakland?

Mr. Jones: What date is that? Is that the 1914 agreement?

[fol. 92] A. 1914, yes. (Reading agreement.) It appears to be a true copy.

By Mr. Scoll:

Q. Now, that is the lease which they now hold under, is that correct?

A. Yes. I think that is correct.

Mr. Scoll: I would like to offer this in evidence.

Examiner Basham: It will be received as exhibit No. 8.

(The agreement referred to was marked "Commission's Exhibit No. 8," and received in evidence.)

Mr. Scoll: I would like to read into the record at this time Clause (b) under Paragraph 3 of the lease which has just been admitted as exhibit No. 8.

> "(b) For the use of said wharves and slips said Howard Company shall pay to the City of Oakland tolls, wharfage and dockage at the rates charged by the city of Oakland at its other municipally owned wharves in the City of Oakland."

By Mr. Scoll:

Q. Is it the intention of the City of Oakland through that clause to provide that Howard shall charge the same rates as are charged by the Port of Oakland?

Mr. Jones: Just a moment, please. Mr. Examiner, the record shows that this lease was made in 1914. Mr. McCarl [fols. 93-142] was not employed by the Port at that time and would have no understanding at all as to what the intention of the City and the Howard Terminal was at that time.

Mr. Scoll: I will put the question another way.

By Mr. Scoll:

Q. As a matter of fact, are the rates and charges that are charged at the Howard Terminal the same as those charged by the Port of Oakland?

A. I will say that they are practically identical. I think there is a slight difference between them in the dockage but they are intended to be on a uniform basis. The reason for that slight difference, I think, is because we have some dockage that runs into longer periods, whereas the Howard Terminal does not.

Q. This lease has never been filed with the Maritime Commission under Section 15 of the Shipping Act of 1916, has it?

A. No.

Mr. Scoll: That is all.

[fol. 143] George H. Bushnell was thereupon called as a witness, for the Commission and, having been first duly sworn, testified as follows:

Direct-examination.

By Mr. Scoll:

Q. Will you tell the reporter your full name?

[fols. 144-146] A. George H. Bushnell, General Agent, McCormick Steamship Company, Oakland.

Q. What are your duties, Mr. Bushnell?

A. Supervisory, I would say, principally.

Q. You supervise the operations of Ninth Avenue?

A. I do.

Q. How long have you occupied that position?

A. Well, approximately four years.

[fols. 147-156] Cross-examination.

* * * * * * * *

[fol. 157] By Mr. Townsend:

Q. On this exhibit that has just been discussed, Exhibit No. 15, you show certain charges paid, and among them are drayage service charges, tolls, etc. Would you please state whether the service charges that you show are service charges paid to Encinal Terminals?

A. Yes. That is in connection with the column.

[fol. 158] Q. Yes, that is what I mean. Were any service charges paid for the handling of the cargo over the 9th Avenue dock?

A. Service charges were paid by the vessel to ourselves, billed to the vessel.

Q. So for this particular charge there was a service charge paid to Encinal Terminals and a service charge paid for the use of the 9th Avenue dock?

A. It was paid to ourselves.

Q. It was paid to yourselves. But I want to make clear that on the same cargo there was a duplicate charge paid, one to yourselves and one to the 9th Avenue dock?

A. That is correct.

Q. With respect to the service charges that are paid to yourself, as you have stated, at the 9th Avenue dock, are those retained by the McCormick Steamship Company or turned over to the Port of Oakland?

A. Retained by the McCormick Steamship Company.

Q. With respect to the tolls, is the situation the same, namely, that there is a toll paid to Encinal Terminals and another toll paid for the use of the 9th Avenue dock?

A. I know there is as far as 9th Avenue is concerned. I am not absolutely certain as far as the other terminal is concerned.

Q. Can you ascertain the fact in that connection and let us know later?

[fol. 159] A. Yes, I can.

Q. Is the toll that is collected for movement of cargo over the 9th Avenue dock retained by the McCormick Steamship Company or paid eventually to the Port of Oakland?

A. It is paid to the Port of Oakland.

Q. Were any other terminal charges paid to Encinal Terminals in addition to the service charge and the tolls in connection with this cargo that was drayed from Encinal Terminals to the 9th Avenue dock?

A. Any other charges?

Q. Besides the service charge and the tolls.

A. Not to my knowledge.

Q. We have been discussing the situation with respect to the charges paid to Encinal Terminals in connection with cargo drayed from Encinal Terminals to the 9th Avenue dock. Would the situation be the same with respect to the

payment of charges to the Port of Oakland at the Oakland Outer Harbor, namely, a duplicate payment of the charges in connection with the service charge?

A. Yes, but not insofar as tolls.

Q. Not insofar as tolls. You show on your Exhibit 15 certain shipments that were drayed from the Oakland Outer Harbor to the 9th Avenue dock and in one instance you show cargo of "Libby, McNeill and Libby," does it not?

A. Right.

[fol. 160] Q. And in the other case you show "Rosenberg Bros." Was that cargo obtained on the dock; that is the transit shed at the Outer Harbor of Oakland or was it obtained in some facility operated or leased by Libby or Rosenberg?

A. In the transit shed.

Q. And you will check that one point of whether Encinal Terminals received any tolls?

A. I will.

Mr. Townsend: Thank you.

Redirect examination.

By Mr. Scoll:

Q. Mr. Bushnell, you mentioned a duplicate payment of service charges on the Outer Harbor cargo. When you say "duplicate payment," you mean one is made to Oakland and the other is made by McCormick to itself?

A. Right.

Q. In other words, it is a bookkeeping transaction, it is not an actual payment to anybody?

A. Insofar as our——

Q. (Interrupting) Insofar as the McCormick payment is concerned, it is a bookkeeping transaction, is it not?

A. Well, unless it is a chartered vessel.

Q. I am talking about service charge.

A. Service charge would be to ourselves, yes.

Q. So it would be a bookkeeping transaction?

[fol. 161] A. I would say it would.

* * * * * * *

[fol. 162] Mr. Townsend: I have some questions, please.

Recross-examination.

By Mr. Townsend:

Q. Mr. Bushnell, Mr. Scoll has referred to this payment of the service charge for the handling of the cargo over the 9th Avenue dock as a bookkeeping transaction or something to that effect as far as McCormick Steamship Company is concerned. Is it not a fact that the McCormick Steamship Company sometimes acts as agent for other Steamship companies in the handling of vessels at that 9th Avenue dock?

A. No.

[fol. 163] Q. Well, are there any vessels owned by the McCormick Steamship Company?

A. I am not certain of that. I am not familiar with our accounting procedure. You may say that this is a bookkeeping entry. I don't know whether it is or not.

Q. Well, is it not a fact that the McCormick vessels are chartered?

A. No.

Q. There are some chartered, are there not?

A. Yes.

Q. Insofar as those vessels are concerned—that is, the chartered vessels—aren't these charges the service charges against the vessel?

A. Yes.

Mr. Geary: You are referring now to Exhibit 15?

Mr. Townsend: Yes.

The Witness: Yes, they are against the vessel.

By Mr. Townsend:

Q. They are against the vessel?

A. Yes.

Q. And that would be true in the case of a chartered vessel?

A. I believe so.

Q. Do you know the basis of the charter arrangements of those vessels that McCormick Steamship Company handles?

[fol. 164] A. I do not.

Mr. Geary: Coastwise trade?

Mr. Townsend: Yes.

By Mr. Townsend:

Q. You are not familiar with that?

A. No.

Q. So that you are not prepared to say, then, whether this is merely a bookkeeping transaction or not?

A. I am not.

Mr. Townsend: That is all, thank you.

Examiner Basham: You are excused.

(Witness excused.)

Mr. Scoll: Mr. Burley, please.

R. F. BURLEY was thereupon recalled as a witness for the Commission, and, having been previously duly sworn, further testified as follows:

Direct examination.

By Mr. Scoll:

Q. You have been sworn, Mr. Burley. What vessels are operated by the McCormick line in the coastwise service? Are they chartered vessels or are they vessels which are owned by the McCormick Steamship Company?

A. We have vessels that are owned by ourselves and vessels that we charter and vessels that we handle on which we call commission basis.

[fol. 165] Q. In the coastwise service?

A. Yes.

Q. Which would be involved in the calculations made on Exhibit 15?

A. That is right.

Q. The service charges that we have been discussing, payable at 9th Avenue who receives those revenues, ultimately?

A. Well, the McCormick Steamship Company as an agency receives the service charges, and, in turn, it is charged to the vessel. It is the service charge in the Port of Oakland tariff. Now, it might be a vessel owned by the McCormick Steamship Company. Then you could really say it was a bookkeeping entry. Again it might be a vessel that was on a charter basis and we only would show it in

the accounts to determine how near we were right in the charter rates that we paid. On a commission basis——

Q. (Interrupting) Just a moment. In the case of a charter, then, that also would go to McCormick?

A. A bookkeeping entry. That goes to McCormick. In the case of a commission vessel, the vessel pays it and we earn it, and that goes to contribute to overhead in operating 9th Avenue Terminal.

Q. So in every case the service charges are received and retained by McCormick for its own use?

[fols. 166-203] A. That's right. And credited to the Oakland agency.

Q. And the Oakland agency is an agency of the McCormick Steamship Company?

A. Yes.

Q. Wholly controlled by them, and the revenues collected by them belong to the McCormick Steamship Company?

A. That is correct. And in our bookkeeping we keep it separate from other items.

* * * * * * *

[fol. 204] GEORGE P. PELL was thereupon called as a witness for the Commission and, having been first duly sworn, testified as follows:

Direct examination.

By Mr. Scoll:

Q. Will you state your full name?

A. George P. Pell.

Q. What is your position with the McCormick Steamship Company, Mr. Pell?

[fols. 205-219] A. Assistant Freight Traffic Manager.

Q. How long have you had that position?

A. Four years.

* * * * * * *

[fol. 220] Cross examination.

By Mr. Geary:

Q. The situation, Mr. Pell, where shipments were billed for Encinal discharge and were actually discharged at Ninth Avenue Terminal of the McCormick Company, Mr.

Burley testified that as a result of that operation the McCormick Steamship Company would receive the benefit of the car loading revenue. To the extent that that operation gave McCormick the benefit of the carloading revenue, it took that revenue away from Encinal Terminals, is that right?

A. That is right.

Q. Now, with relation to the situation reflected in the letters, exhibits 18 to 22, that have just been introduced, is it not a fair statement to characterize the conditions outlined in those letters as representing nothing more nor less than the McCormick Steamship Company as a terminal operator competing with the Encinal Terminals as a terminal operator for every possible piece of cargo that they could get to move over the Ninth Avenue terminal?

A. That is correct.

Q. Now, in so far as your representatives, or rather, the representatives of the McCormick Steamship Company in the north, were refusing to take cargo which was destined [fol. 221] for Encinal Terminals, and which caused you the embarrassment which was expressed in the letters, the tariffs during all those particular periods provided for Encinal discharge?

A. That is right.

Q. Now, with respect to the Fiberboard account, about which Mr. Scoll asked you as among the shippers and consignees wh-ch were named by him, where does that Fibreboard cargo originate?

A. Puget Sound.

Q. And the vessels from Puget Sound, as I understand your testimony, have a sufficient volume to permit a direct call at the Encinal Terminals?

A. As a rule.

Q. Mr. Pell, were you here in the hearing room yesterday when the lease between the McCormick Company and the city of Oakland was introduced in evidence?

A. I was not.

Q. Do you know that that lease contains a provision which obligates the McCormick Steamship Company that it will endeavor to the extent of its ability to increase the amount of tonnage handled by it through the Port of Oakland, according to the true spirit and purpose of the agreement?

A. I do.

Q. You know that?

A. I do.

[fol. 222] Q. And has the McCormick Steamship Company endeavored to do that?

A. It has.

Q. And this situation that we are just discussing does or does not, in your opinion, reflect the action of the McCormick Steamship Company in endeavoring to bring that about?

A. It does.

Q. It does reflect that condition?

A. It does.

Mr. Geary: That is all.

Redirect examination.

By Mr. Scoll:

Q. Mr. Pell, Mr. Geary asked you a question about car loading revenue. What car loading revenue did he refer to?

A. There is lots of freight that comes down that is loaded direct from ship to cars.

Q. It is loaded direct from ship to cars?

A. Yes.

Q. You mean unloaded direct from ship to cars?

A. It is unloaded from the ship direct to a car, that is one type, and then it might go on a dock and be loaded from the dock at a later date to cars, in which there is a car loading charge involved.

Q. There would be a car loading charge in both cases, or [fol. 223] just the one?

A. In both cases.

Q. Who assesses that charge?

A. The terminal, the people who do the work.

Q. So that when you unload direct from ship to car, or load into the transit shed, and then into the car at Ninth Avenue, you assess a car loading charge?

A. That is right.

Q. And on whom is that charge assessed?

A. On the consignee or the owner of the car.

Q. And that charge covers you for the service, or, I should say—correct that—reimburses you or pays you for the services of the loading of the cars?

A. That is right.

Q. It is a payment for which you render a service?

A. That is right.

Q. Now, you stated in response to a question of Mr. Geary's that as a rule the Puget Sound Vessel has enough cargo for a direct call at Encinal. Now, does it always follow that when a Puget Sound vessel has enough cargo for a direct call at Encinal, that such a direct call is made?

A. It does not.

Q. But, nevertheless, the service charges on the Encinal billed cargo are paid to Encinal?

A. That is correct.

[fol. 224] Mr. Scoll: That is all.

Mr. Townsend: I have several questions——

Examiner Basham: Let us take a short recess at this time.

(Short recess.)

Recross examination.

By Mr. Townsend:

Q. Mr. Pell, did I understand you to say that in the case of some of the southbound coastwise traffic which is billed to Encinal Terminals, it is sometimes unloaded at the Ninth Street Dock and delivered to the shipper at the Ninth Street dock?

A. Where it is consigned to Encinal?

Q. Yes.

A. That is right.

Q. And in those instances the cargo would never actually pass over the docks at Encinal Terminals?

A. Correct.

Q. Now, in those instances do the Encinal Terminals receive a toll from the cargo?

A. I couldn't tell you that. I really don't know. I haven't been over in Oakland there for four years, and Mr. Bushnell can tell you better than I. I really don't know.

Q. Well, is a service charge paid to Encinal Terminals?

A. It is.

[fol. 225] Q. By the McCormick Steamship Company?

A. That is right.

Q. You referred to certain car loading that McCormick Steamship Company did when the cargo is handled over

the Ninth Street dock in Oakland instead of being handled over the docks of Encinal Terminals; you also mentioned the fact that one of the commodities involved in this type of movement that we have discussed is fibreboard, did you not?

A. Fibreboard Products? I don't recall that I did. I might have.

Q. You mentioned that the Fibreboard Company was one of the shippers that had the cargo billed to Encinal Terminals, did you not?

A. Yes.

Q. And their cargo was actually handled over the Ninth Street Dock in some instances?

A. Correct.

Q. Is that true in all instances with respect to the cargo of the Fibreboard Products Company?

A. No, it is not.

Q. Is it not a fact that the Fibreboard Products cargo is handled direct from ship's tackle to the car and there is no actual carloading operation performed by Encinal Terminals when that moves over Encinal Terminals?

A. The work is done by the sailors on the ship or by our [fol. 226] Longshoremen, that is true.

Mr. Scoll: You said Encinal? You mean Encinal?

Mr. Townsend: I mean Encinal.

By Mr. Townsend:

Q. Who receives that revenue for that car loading, if any?

A. I couldn't say definitely, but I am inclined to say it is Encinal. Bushnell could answer that better than I could.

Q. We will take that up with him then. Do you mean by that that McCormick Steamship Company is loading cars for Encinal Terminals?

A. Well, all I can say is that is the practice in the business. Where a car is loaded direct from the ship it is done either by the sailors or by the longshoremen employed by the ship. That is the practice. The ship is generally considered the one that is doing the work.

Q. And you don't know who receives the revenue for that operation?

A. Bushnell could give you that definitely. I would sooner you would ask him.

Q. With respect to the cargo of the Fibreboard Products Company, concerning which you have testified, that moves from the Pacific Northwest and is billed to Encinal Terminals, where does that car ultimately go?

Mr. Geary: I should think, as a matter of fact, that the witness could not know. His obligation carries a bill of [fol. 227] lading from the northwest to Encinal Terminals, and it goes to Encinal Terminals as far as he is concerned, and the question would be one properly addressed to the Fibreboard Products Company.

By Mr. Townsend:

Q. I will ask the witness if he knows where that cargo goes.

A. I don't know definitely. I have an idea.

Q. Don't you solicit that cargo from somebody?

A. Yes, the company solicits it, yes.

Q. From whom do you solicit that?

A. From the Fibreboard Products.

Q. Does the Fibreboard Products Company have a plant in Stockton?

A. They do.

Q. Don't you know, as a fact, that a lot of that cargo about which we are talking goes to Stockton?

Mr. Geary: Just a moment. Mr. Examiner, I don't know that that has any relevancy unless Mr. Townsend can tell us what that relevancy that has to the terminal here in these proceedings. I think we are investigating the terminal operations and we are not investigating anything with respect to origin points or destination points of cargo outside of the particular terminals that are respondents. I object to the question on the ground that it is incompetent, [fol. 228] irrelevant and immaterial, and has no place in this proceeding, and if Mr. Townsend has a particular complaint he has a proper tribunal to file a complaint before and try out that issue.

Mr. Townsend: I thought, Mr. Geary, we were here trying out the question of whether there is a written agreement or arrangement between McCormick Steamship Company and Encinal Terminals. This question is directed toward that question as a preliminary question, to show that cargo is being forced through this Encinal Terminals at Ninth

Street under that arrangement instead of following the channel through Stockton, and the question is perfectly relevant and material.

Mr. Geary: If that is a fact, then it is my understanding that on the basis of which this case is proceeding you may be in the right church but in the wrong pew, because at the moment we are considering violations or alleged violations of Section 15 of the Act.

Mr. Townsend: That is what I say, there is an alleged agreement between McCormick and Encinal that has not been filed and I am trying to develop the fact.

Examiner Basham: Read the question.

(Question read by the reporter as above recorded.)

Examiner Basham: Objection overruled.

A: I would say it does.

By Mr. Townsend:

Q. Have you ever been to Stockton and conferred with [fol. 229] any receiver of any cargo from the Pacific Northwest in an effort to prevent the discontinuance of this movement of Fibreboard products through the Ninth Street Dock or Encinal Terminals in the manner that we have been discussing?

The Witness: Will you read me that, please?

(The pending question was read by the reporter as above recorded.)

A. No.

By Mr. Townsend:

Q. Have you ever been to Stockton and conferred with the owners or representatives of the newspaper known as the Stockton Record in an effort to prevent the movement of news print paper by the McCormick Steamship Company from the Pacific Northwest through Stockton, so that it would not be necessary for the McCormick Steamship Company to discontinue handling Fibreboard Products through the Ninth Street Dock or Encinal Terminals in the manner in which we have been discussing?

A. No.

Q. The answer is "No"?

A. The answer is "No."

Mr. Townsend: That is all, thank you.
Mr. Geary: Have you any more questions, Mr. Scoll?
Mr. Scoll: No more.

[fol. 230] By Mr. Geary:

Q. Mr. Pell, there is one situation that has not apparently been explained. When cargo which is originally destined for Encinal Terminals is actually discharged at Ninth Avenue, is it not true that some of that cargo is actually taken from Ninth Avenue and laid down on the Encinal Terminals transit shed?

A. I believe there are occasions where that has happened, yes.

Q. And in that situation Encinal Terminals Com-any makes the direct delivery of that cargo to the consignee?

A. That is correct.

Q. And McCormick in that situation pays a service charge on that cargo?

A. We do.

Mr. Geary: That is all.
Examiner Basham: Any further questions?
(No response.)
You are excused.

(Witness excused.)
Mr. Scoll: Mr. George Bushnell.

GEORGE H. BUSHNELL was recalled as a witness for the Commission and, having been previously duly sworn, testified further as follows:

Direct examination.

[fol. 231] By Mr. Scoll:

Q. You have been previously sworn, I believe, have you not?

A. I have.

Q. Do you have there some information for the record?

A. Information that was requested by Mr. Geary yesterday as to the number of vessels loaded at Ninth Avenue during the month of February, 1938 (Handing to counsel).

Mr. Scoll: He is your witness, Mr. Geary, if you want to ask him some questions on that.

Mr. Geary: I think, in view of the fact, Mr. Examiner, that the record shows that I requested Mr. Bushnell to furnish this information, perhaps the simplest way to permit it to go into the record would be merely to introduce the recapitulation which Mr. Bushnell has prepared, and which indicates that there were 15 vessels during that particular month.

The Witness: Fourteen.

Mr. Geary: Fourteen vessels, you are right. I ask that it be introduced as an exhibit.

Examiner: It may be introduced and received as Exhibit 23.

(The document referred to was marked "Commission's Exhibit 23" and received in evidence.)

Mr. Scoll: Have you any more questions?

Mr. Geary: Not on that particular subject.

[fol. 232] By Mr. Scoll:

Q. Mr. Bushnell, the document that I handed you is entitled, "McCormick Steamship Company Cargo List;" it is in three sheets, the first one is Puget Sound to Encinal Terminals, Alameda; the second is Puget Sound to Encinal Terminals, Alameda; and the third is Columbia River to Encinal, Alameda. Are you familiar with the contents of those sheets?

A. I am fairly so.

Q. What do they show?

A. For the particular period involved, from June, 1938 to May 20, 1939, they show a list of southbound cargo billed to Encinal Terminals, Alameda, but actually discharged at Ninth Avenue Terminal and delivery effected at that point.

Q. Were these lists prepared by you or under your supervision?

A. They were. In accepting them for the record, I trust you will do so, subject to clerical errors.

Mr. Scoll: Yes. I offer them for the record.

Examiner Basham: Off the record.

(Discussion off the record.)

Mr. Geary: May I ask Mr. Bushnell one or two questions on the exhibit?

Mr. Scoll: Yes.

Mr. Geary: Did you, yourself, Mr. Bushnell, actually test the accuracy of this report as indicating that the merchandise was delivered to the consignee from Ninth Avenue? [fol. 233] The Witness: Possibly I should correct that. It may be that in certain instances some of this freight was eventually drayed to Encinal Terminals. I believe our available records would not show, unless we checked back, that that was definitely the case.

Mr. Geary: Just for the purpose of bringing a point right clearly into focus, will you look——

Examiner Basham: Just a minute, Mr. Geary. I believe I will accept this.

Mr. Geary: All right.

Examiner Basham: The cargo list showing cargo from Puget Sound to Encinal Terminals, two sheets, will be received as exhibit 24-A, and the cargo list from Columbia River to Encinal Terminals will be 24-B.

(The documents referred to were thereupon marked "Commission's Exhibits 24-A and B" and received in evidence.)

Mr. Geary: Referring, then, to exhibit 24-A, I call your attention to those shipments of Hunt Brothers, totaling some 1,500 cases of canned goods. Would you say that that particular shipment was actually delivered to Hunt Brothers from Ninth Avenue Terminal?

A. It is possible.

Q. Do you know whether that is the fact or not?

A. Not without checking further.

Q. Will you please take that record before the hearing is [fol. 234] concluded and definitely check to see whether or not the categorical statement which you made in the record to the effect that all of that cargo was in reality delivered to the consignee at Ninth Avenue is correct; and if there is any correction to be made in the record or in the exhibit, will you make a statement to that effect for the record?

A. I will.

Mr. Scoll: May we go off the record for a minute, Mr. Examiner?

Examiner Basham: Yes.

(Discussion off the record.)

By Mr. Scoll:

Q. This list, Mr. Bushnell, was prepared, was it not, with the intention of showing only the cargo which was billed to Encinal in the southbound service from Puget Sound and Columbia River, but actually discharged at Ninth Avenue, was that correct?

A. That was the intent and purpose of it.

Q. You didn't intend to include in this list any cargo which was billed to Encinal but discharged at Encinal?

A. No, sir.

Q. And subject to such corrections as you may have to make on this list, it shows the cargoes which were delivered to the consignees at Ninth Avenue, and therefore never touched Encinal Terminals?

[fol. 235] A. That is a fact, subject to its being correct?

Q. Subject to such corrections as have to be made?

A. Yes.

Q. Now, the toll charge is a charge that is ordinarily made against the cargo, isn't that correct?

A. That is correct.

Q. And the service charge, of course, is against the vessel?

A. Yes.

Q. Now, this list shows a column headed "Tolls." Does that list of tolls means that those toll charges were paid to Encinal?

A. I believe it does.

Q. So that that column entitled "Tolls" shows the amounts of tolls paid by the McCormick Steamship Company to Encinal Terminals?

A. I believe so.

Q. And the column headed "Service Charge" shows the service charges that were paid on that cargo to Encinal Terminals?

A. Yes, sir.

Q. Now, does the McCormick Steamship Company discharge cargo billed to other of the Bay Terminals than Encinal at its own Ninth Avenue terminal?

A. We do.

Q. Does McCormick give billing to other terminals than Encinal in the East Bay?

[fol. 236] A. We do.

Q. And where do you discharge that cargo?

A. Sometimes direct, sometimes at Ninth Avenue Pier.

Q. And when you discharge it at Ninth Avenue Pier, do you pay those other terminals a service charge similar to the charge you pay Encinal?

A. I believe we do.

Q. Let us get at it a little more specifically. You do give current billing on southbound cargo from the northwest, do you?

A. We do.

Q. And occasionally you discharge that cargo at Ninth Avenue?

A. Yes, sir.

Q. And deliver it to the consignee at Ninth Avenue?

A. I believe in most cases that cargo is drayed.

Q. That cargo is drayed over to Oakland?

A. No, to the pier that it is accepted for.

Q. To the pier that it is accepted for, which may be one of the Oakland piers?

A. Or the Outer Harbor.

Q. Or might be Outer Harbor?

A. Yes.

Q. Then you pay Oawland a service charge on that cargo?

A. We do.

Q. Do you also pay them the tolls that you pay Encinal?

[fol. 237] A. The Port of Oakland tariffs provide that only one toll shall be collected between their respective properties.

Q. So that you pay them no toll?

A. There is no toll absorption, no.

Q. By toll absorption, you mean that McCormick does not pay Oakland any tolls and absorbs them?

A. That is correct.

Q. How often does it happen that you would bill cargo southbound to Outer Harbor and dray it at Ninth Avenue to Outer Harbor, and pay a service charge on it to Oakland?

A. That movement is very small in comparison to the other movement. As I say, it is very small and very occasional.

Q. Now, you say that is very small. Would it be true that the amount of cargo which would be billed to Oakland but which you would actually discharge at Ninth Avenue and then yet pay a service charge to Oakland, would be still smaller? Wouldn't it?

Perhaps the question is a little involved. Let me rephrase the question.

How often do you accept cargo for Outer Harbor billing but deliver it at Ninth Avenue to the consignee?

A. Very rarely.

Q. Very rarely? And on those occasions you pay Oakland a service charge?

A. I am not certain.

[fol. 238] Q. You are not sure?

A. I am not sure.

Q. I show you now a document consisting of two pages, entitled "McCormick Steamship Company cargo list, intercoastal—W. B.", which I assume means "Westbound." Are you familiar with that document?

A. I am.

Q. Was that list prepared by you or under your direction?

A. Under my direction.

Q. Now, what does the list show?

A. It shows shipments of westbound intercoastal cargo for the period of June 1, 1938, to May 31, 1939, which were billed to Encinal Terminals and discharged at Ninth Avenue pier, and delivery effected at that point.

Q. So this is a list of intercoastal shipments for the period indicated which were billed to Encinal but discharged at Ninth Avenue and on which service and toll charges were paid to Encinal Terminals, is that correct?

A. That is correct.

Q. And the cargoes on this list didn't go to Encinal Terminal direct, did they?

A. To the best of my knowledge, none of those were ever delivered to Encinal.

Q. And they were delivered to the consignees at Ninth Avenue?

[fol. 239] A. That is right.

Mr. Scoll: I offer this document for the record.

Examiner Basham: It will be received as exhibit No. 25.

(The document referred to was marked "Commission's Exhibit No. 25," and received in evidence.)

By Mr. Scoll:

Q. Now, the shipments included in that list originated at eastern points, and were transported in Intercoastal commerce, were they not?

A. They were.

Q. And in vessels of the McCormick Steamship Line?

A. Yes, sir.

Q. Now, does McCormick pay service and toll charges on any other westbound intercoastal shipments which are billed to other terminals than Encinal and delivered at Ninth Avenue?

A. I didn't get that question. Will you repeat it?

Mr. Scoll: Read the question.

(Question read.)

The Witness: No, we don't, unless by direct call, because our tariff only provides Ninth Avenue as a port of discharge in Oakland.

By Mr. Scoll:

Q. So that where——

A. In other words, we may make a direct call at another terminal, and then we would pay a service charge.

[fol. 240] Q. But if you don't make a direct call and a discharge at Ninth Avenue, you don't have any other terminal service and toll charges except Encinal?

A. There are no shipments in that category.

Mr. Scoll: I see.

Mr. Graham: What does he mean by that, that there are no shipments in that category?

By Mr. Scoll:

Q. Can you answer Mr. Graham?

A. Well, on intercoastal traffic westbound our only Oakland Terminal is Ninth Avenue Pier, unless prior booking arrangements are made.

Mr. Graham: What do you mean, you don't accept any other cargo billed for any other East Bay Terminal except Ninth Avenue?

The Witness: Only subject to prior booking arrangements, in which case it is usually by direct call, it is delivered to the other terminal by direct call.

Mr. Graham: I see. In other words, if you have cargo, say, for Howard Terminal on your ship, billed for Howard Terminal, you actually deliver at Howard Terminal and you don't deliver it at Ninth Avenue?

The Witness: That is correct.

By Mr. Scoll:

Q. Now, reverting to the southbound service for a mo-
[fol. 241] ment, Mr. Bushnell, how often do your southbound vessels call direct at Encinal?

A. I couldn't say definitely. It would have to be checked into.

Mr. Geary: Mr. Examiner, for the purpose of clarification, because I am under the impression that we may be stepping off the deep end here, is there anybody present in the room who has got one of the present intercoastal westbound tariffs, because the witness was obviously relying on memory, and the answer was not accurate as to what the westbound tariff permits?

(No response.)

With that in mind, I think I may just as well at this time ask if the Commission will consider in evidence the westbound tariff of the Intercoastal Steamship Freight Association?

Mr. Scoll: I am willing to so stipulate.

Examiner Basham: Any objection to that stipulation or understanding?

(No response.)

Examiner Basham: That will be permitted.

Mr. Scoll: What was the last question?

(The question and answer were read.)

By Mr. Scoll:

Q. Would the southbound call depend on the volume of
[fol. 242] cargo you had billed for Encinal in the ship?

A. That would have something to do with it; the element of time, cost, and other factors that have already been expressed by Mr. Burley and Mr. Pell would enter into it.

Q. Then would you say that such calls were frequent?

A. They are frequent.

Q. What do you mean by frequent?

A. Well, possibly every other vessel.

Q. Will you prepare for us and submit for the record a list of the southbound vessels which discharged at Ninth Avenue, and those which discharged at Encinal during the month of January, 1940?

A. 1940 would not be a representative month because for part of the month there was a strike on.

Q. What would be a representative month?

A. I would say May, 1939.

Q. Why would that be a representative month?

A. Well, I just take that out of the sky. Take January, 1939.

Q. Suppose you take two months, January, 1939, and June, 1939; are those months representative?

A. I think so.

Q. All right. This list which has been introduced as exhibit No. 24-A and 24-B, shows the following consignees of southbound traffic billed to Encinal. Fibreboard, Hunt [fol. 243] Brothers, California Packing, Crown Willamette, Dewey & Almy, National Lead, U. S. L. Battery, Western States Grocery; those consignees all took delivery at Ninth Avenue, is that right, to your knowledge?

A. If that record is correct, they did.

Q. Now, just to clarify the record, will you state again whether in your knowledge McCormick pays these service and toll charges to any other East Bay Terminal to which it gives billing when the vessel discharges at Ninth Avenue?

The Witness: Will you repeat that question, please?

(Question was thereupon read by the reporter as above recorded.)

A. I think you could clarify that. Do you mean the delivery is effected at that point?

By Mr. Scoll:

Q. And the delivery is effected at Ninth Avenue?

A. I am not certain whether we do or do not.

Q. If such statements were made, would you know about it?

A. I would.

Mr. Scoll: That is all.

Cross-examination.

By Mr. Geary:

Q. Mr. Bushnell, referring to exhibits 24-A and 24-B, both of those exhibits refer to a column which is headed with the word "Tolls." If that cargo is actually discharged at [fol. 244] Ninth Avenue and delivery is effected at Ninth Avenue, as testified by you, what becomes of the tolls which are charged by the Port of Oakland?

A. The tolls follow the shipment and are collected from the consignees in addition to their regular freight charges. Those tolls would be collected by us and turned over to the Port of Oakland.

Q. Now, then, using the first item on exhibit 24-A, which is a shipment of the Fibreboard Products on June 3, 1938, to the Fibreboard Products at Antioch, that shows a service charge of $3.77 and a toll charge of 58 cents. Now, in addition to that, would there be a toll charge which would be due to the Port of Oakland on that shipment?

A. Yes, the Port of Oakland is entitled to tolls on the freight that moves over their facilities.

Q. And would that toll charge be paid to the Port of Oakland?

A. It would be.

Q. And would that toll charge be the same as the 58 cents that is reflected here?

A. It should be.

Q. In which event would that be charged against the cargo in addition to the 58 cents which you say is here paid to the Encinal Terminals?

A. There are not two toll charges against the cargo.

Q. What I am trying to get at is, as I understood your [fol. 245] direct testimony, you paid to the Encinal Terminals on that particular shipment, $3.77, and 58 cents?

A. That is right.

Q. In addition to that, there was another 58 cents which had to be paid to the Port of Oakland?

A. Right.

Q. Now, who paid that?

A. We paid it to the Port of Oakland after collecting it from the consignee. You can work this either way, you can

say we are paying Encinal the one we collect from the cargo and absorbing the one we pay the Port of Oakland, or the other way around.

Q. In any event, as far as that particular shipment was concerned, there was paid to the Encinal Terminals a total of $4.35, and in addition to that there was 58 cents to the Port of Oakland?

A. That is correct.

Q. Have you that Encinal Terminals bill number, which is 60482, in your files?

A. It will be in our accounting department in San Francisco.

Q. And in checking against that bill number would indicate whether or not the Encinal Terminals Company actually made that charge against you, would it not?

A. The bill would be on their billhead.

Q. Will you take a look at that bill and see if on that bill [fol. 246] or any of the bills which are numbered or listed there in exhibit 24-A, 24-B or 25, there was actually shown a toll charge made against the McCormick Steamship Company by the Encinal Terminals, and will you state for the purpose of the record what the condition of those bills indicates?

A. I will have to look up that information.

Q. Now, if that cargo was taken direct to Encinal Terminals, Encinal, in addition to the service charge, would also collect a toll charge?

A. They would collect a toll charge from the owner of the cargo?

Q. On the cargo that was delivered at Encinal?

A. Yes.

Q. And which toll charge, under your statement, is now paid to Oakland as a toll charge?

The Witness: Will you read that?

(The question was thereupon read by the reporter as above recorded.)

A. I don't get it.

By Mr. Geary:

Q. All right, I will see if I can clear it up. On that first shipment again, on exhibit 24-A, if that shipment was

delivered direct at a pier of the Encinal Terminals, Encinal would assess a toll charge of 58 cents?

A. Correct.

[fol. 247] Q. And because of the fact that that shipment was delivered at Ninth Avenue, according to your statement, the Port of Oakland is entitled to a 58 cent toll charge?

A. That is correct.

Q. Now, during any of the period mentioned in exhibits 24-A, 24-B, and 25, were there any shipments either in coastwise or in the intercoastal that were handled by the McCormick Steamship Company, destined for delivery to the Howard Terminals, that were discharged at Ninth Avenue?

A. Yes, I believe there were.

Q. And in those instances, when they were discharged at Ninth Avenue, what action was taken by the McCormick Steamship Company to get the cargo to the Howard Terminals?

A. It was drayed to the Howard Terminals.

Q. And there delivered to the Howard Terminal?

A. Yes.

Q. Now, taking exhibit 24-A for the moment, which relates to a period from June 3, 1938, to May 15, 1939, on those shipments that were destined for delivery to the Encinal Terminals, your tariff permitted you to make the drayage delivery to the Encinal Terminals, did it not?

A. It did.

Q. And have you any idea as to the approximate cost that it would be to the McCormick Steamship Company to dray that cargo from Ninth Avenue to the Encinal Terminals?

[fol. 248] A. The average rates are on the basis of $1.00 per ton at the present time on those commodities.

Q. And, therefore, instead of draying that cargo to Encinal Terminals—well, Mr. Bushnell, I frankly have my own question about the accuracy of that record from some of the information that has been conveyed to me, that a substantial amount of that cargo was not in fact delivered to the consignee at Ninth Avenue, but that is subject to check—but, accepting that exhibit as correct, the McCormick Steamship Company, on the cargo which it did dray to the Encinal Terminals in fact substituted the expense of the drayage charge for the service charge which it paid to the Encinal Terminal?

Mr. Scoll: That sounds like a conclusion to me, Mr. Geary.

Mr. Geary: If it is a fact, it is a fact whether it is a conclusion or not, and I think that is what we are interested in.

Mr. Graham: How would that affect the issues in this proceeding?

Mr. Geary: I will submit the question.

Examiner Basham: I wonder if you can reframe that question? Is this a convenient place to stop for lunch? Two o'clock.

(Whereupon at 12:35 p. m. a recess was taken until 2:00 p. m. of the same day.)

[fol. 249] Afternoon Session

2:00 p. m.

Examiner Basham: Come to order, please.

George H. Busnell resumed the stand and testified further as follows:

Cross-examination (resumed).

By Mr. Geary:

Q. Mr. Busnell, let me reframe the question which we were considering before the adjournment: If the cargo which was destined for Encinal Terminals was actually taken by the vessel and delivered to Encinal Terminals, the Encinal Terminals would be entitled to a service charge on that cargo and it would also earn any car loading that might be involved in the operation in sending the cargo to the ultimate consignee, isn't that true?

A. That is true, to a point. On cargo transferred direct from vessel to car, the car loading on that has accrued to the McCormick Steamship Company.

Q. In other words, the McCormick Steamship Company would make that car loading charge on shipments which were discharged direct from the vessel into an open gondola?

A. Right.

Q. And Encinal wouldn't have any part of that car load-
[fol. 250] ing charge?

A. No.

Q. Now, to what extent, if at all, does that operation of discharging into an open gondola compare with the discharge of cargo onto the floor of the transit shed for ultimate car loading?

The Witness: Will you restate that question?

(The question was read by the Reporter.)

A. Well, in the first place, it is a faster operation, and it relieves the pier shed of any congestion.

By Mr. Geary:

Q. What I mean, Mr. Bushnell, is, what is the volume, comparatively speaking, of such car loading direct from ship's tackle into open gondolas, compared with car loading from the floor of the transit shed?

A. The proportion is materially greater.

Q. The proportion of what is materially greater?

A. The proportion of tonnage so moved or handled.

Q. Is it proportionally greater loaded into the open gondola, or greater discharged onto the floor?

A. Into the gondola.

Q. It is greater loading direct into the gondolas than it is onto the floor of the transit shed?

A. That is correct.

Q. Is that true with respect to cargo which was desig- [fol. 251] nated for Encinal Terminals discharge?

A. That is what I am speaking about.

Q. I didn't want to get the thing confused with respect to the general, ordinary operation, of the McCormick Steamship Company in comparison with——

A. This applies particularly to southbound cargo from Puget Sound.

Q. That is right. Now, taking the shipment, however, that was discharged and moved from the transit shed into the cars, if that merchandise was discharged at the Encinal Terminals they would earn that car loading?

A. That is correct.

Q. On the other hand, where that cargo is discharged onto the Ninth Avenue Terminal, that car loading charge is earned by the McCormick Steamship Company?

A. That is correct.

Q. Now, in addition to the car loading charge that might be earned by the Encinal Terminals if the vessel went direct

to the Encinal Terminals, there would also be a charge assessed by Encinal against the cargo in the form of tolls?

A. That is right.

Q. And Encinal would earn that?

A. Yes.

Q. Is it not true that if the cargo was discharged onto the floor of the Ninth Avenue Terminal, and the Encinal [fol. 252] Terminals insisted that that cargo be brought over to the Encinal Terminals, that it would cost the McCormick Steamship Company approximately $1.00 a ton for that cargo?

A. That is correct.

Q. And on that particular cargo the Encinal Terminals would earn the car loading, and likewise would charge a toll against the cargo?

A. That is correct.

Q. Has there ever been any time that you can recall, in your connection with the McCormick Steamship Company at Oakland, where the Encinal Terminals Company has ever definitely compelled the McCormick Steamship Company to dray that cargo over to Encinal Terminals so that they might earn the service charge, the car loading charge, and the toll?

A. No, sir.

Q. And to the extent that the McCormick Steamship Company paid to the Encinal Terminals the service charge on cargo that was delivered direct from Ninth Avenue, the McCormick Steamship Company saved itself at least $1.00 a ton, which would otherwise be required to be charged for drayage from Ninth Avenue to Encinal?

Mr. Scoll: I think that question again calls for a conclusion of the witness which is not borne out by the previous testimony, and for which certainly no foundation has been laid. This witness has testified merely that the cargo which [fol. 253] is discharged at Ninth Avenue into cars is assessed a car loading charge which is collected by McCormick, and that if that cargo had been discharged at Encinal, Encinal would collect the charge. Now, on that basis I cannot see what foundation has been laid for this witness to state his conclusion that McCormick pays to itself the car loading charge and such draying charge as it might have to pay if the cargo was transferred to Encinal.

Mr. Geary: Mr. Examiner, it is my understanding that

the section covering this particular case which we are considering at this time is Section 15, and what I am endeavoring to establish is that this arrangement does not in anywise constitute an agreement between Encinal and the McCormick Company, and that in reality what is being accomplished here—and I have no objection to so characterizing it—that it is the McCormick Steamship Company, for the best interests of its own operating convenience, that desires to make the delivery and to take this cargo in this particular fashion rather than to pay the $1.00 a ton.

Mr. Scoll: I think that that, again, is argument, which can be developed on the basis of the facts that are disclosed in this record. I think it is improper to ask the witness whether on the basis of the foundation you have laid the McCormick Company pays any money.

Examiner Bashan: Please read that question back.

[fol. 254] (The question referred to was read by the Reporter.)

Examiner Basham: I think that is a proper question. Let the witness answer.

A. That is true to a greater or lesser degree.

Mr. Scoll: Why do you qualify your answer to that question, Mr. Bushnell?

The Witness: Possibly I should not qualify it.

Mr. Scoll: In other words——

The Witness: By delivering at Ninth Avenue pier we save $1.00 a ton, there is no doubt about that, on that cargo that is billed to Encinal.

By Mr. Geary:

Q. And is it not likewise true that by that same operation, where you make delivery of the cargo from Ninth Avenue, you deprive Encinal of the car loading earnings?

A. On such cargo as might be handled that way.

Q. Now, have you ever had cargo delivered on Ninth Avenue which was definitely designated for discharge at Howard Terminal?

A. Yes, we have.

Q. And how is that cargo taken from the Ninth Avenue Terminal to the Howard Terminal?

A. By dray.

Q. And there delivered into the possession of the Howard Terminal?

[fol. 255] A. That is right.

Q. Has there ever been any situation where you have made direct delivery of that cargo to the consignee?

A. There have been such cases.

Q. Do you recall whether or not in such cases a service charge was paid to the Howard Terminal?

A. I believe so.

Q. The cost of draying from Ninth Avenue Terminal to Howard Terminal is $1.00 a ton?

A. Yes, sir.

Q. The same as it is to Encinal?

A. Yes, sir.

Q. In that particular case, where the cargo was destined for Howard Terminal, was a toll charge made against the cargo by the McCormick Steamship Company, and another toll charge assessed by the Howard Terminal?

A. I don't know.

Q. Referring to Exhibits Nos. 24-A, 24-B, and Exhibit 25, do you know, Mr. Bushnell, whether those exhibits and the extensions were made by the same employee at the McCormick Steamship Company, or by different employees?

A. By different employees.

Q. In other words, the listing of the shipper and consignee was made by one employee, and the extensions made by another?

A. I think, in effect, they were made by the same people. [fol. 256] This is the only exception that looks like it has been put in by someone else (indicating).

Q. That is the extension on the second page of Exhibit 25?

A. Yes. I would like to check that further, though, because there were three people working on this.

Q. I mean, quite frankly, Mr. Bushnell, that is exactly what I have in mind, and I want to be sure that particular exhibit is accurate before I resume any further cross examination, and it was a part of the reason that I have just expressed that I wanted you to have the opportunity of checking the exhibit carefully.

A. I shall do that.

Q. If I have not already requested you to do so with respect to those exhibits, I wish you would definitely make it a point to check whether or not the Encinal Terminals

did, in fact, charge the tolls which are shown on Exhibits Nos. 24-A and 24-B, for the period from June, 1938, to May, 1939.

A. I shall do that.

Mr. Geary: I will reserve my further cross examination of the witness with respect to those exhibits until such time as he has had the opportunity of making the check that I have requested of him.

Redirect examination.

By Mr. Scoll:

Q. Mr. Bushnell, Mr. Geary asked you to determine [fol. 257] whether Encinal had actually charged McCormick the tolls which are listed on Exhibit 24-A. Now, for such determination that you make for Mr. Geary as to whether or not the tolls were charged and whether or not the service charges were also charged to McCormick by Encinal, will you also include in that determination whether or not those charges were paid by McCormick?

A. I shall be glad to.

Q. Now, Mr. Geary asked you some questions about car unloading into gondolas. What commodities do you unload into gondolas at Ninth Avenue in the southbound service?

A. The particular commodity is pulp board, in what are called "jumbo rolls," large rolls with an iron core, weighing approximately three tons each.

Q. Is that for the account of one consignee?

A. Yes, it is.

Q. Do you have several such accounts, or only one?

A. Only one, as far as I know.

Q. And those shipments to that consignee are usually billed to Encinal?

A. Yes.

Q. They are always billed to Encinal?

A. Practically; I don't know any that have not been.

Q. Now, who determines where cargo shall be delivered, Encinal or the consignee?

[fol. 258] A. I think that is determined between Encinal and or the owner of the cargo.

Q. Now, under your——

A. That is, between ourselves and Encinal and the owner of the cargo.

Q. Between all three of you?

A. Yes.

Q. Well, now, if the consignee of that pulp board tells you that he will accept delivery at Ninth Avenue, you deliver it to him at Ninth Avenue?

A. That is correct.

Q. Similarly, if the consignee of any other cargo is willing to accept delivery at Ninth Avenue, you will deliver it to him at Ninth Avenue?

A. We will.

Q. And in your business you make it a practice, wherever possible, to have your consignees accept cargo at Ninth Avenue?

A. We do, if the vessel has Alameda cargo aboard and is not discharging direct at that port.

Q. Now, then, if Encinal insisted that this cargo of pulp board—that a particular cargo of pulp board, let us say, should be brought from Ninth Avenue after it had been unloaded there, that is, discharged from the vessel but not delivered—if Encinal insisted that such cargo should be [fol. 259] brought over to Encinal's pier, would you absorb the cost of moving it over there?

A. I believe that would have to be qualified to this extent——

Q. No, just a moment. Answer my question.

The Witness: Will you repeat that question?

(The question referred to was read by the Reporter.)

A. We would.

By Mr. Scoll:

Q. Notwithstanding the fact that the consignee was willing to take delivery at Ninth Avenue?

The Witness: Will you repeat that question?

(The question referred to was read by the Reporter.)

A. Is that a question?

By Mr. Scoll:

Q. Yes.

A. It is rather a hypothetical question. I don't know whether it would ever come up in such a way.

Q. Well, how would it ever come up that Encinal would insist that you deliver the cargo at Encinal Terminals after you had unloaded it at Ninth Avenue?

A. I previously testified.

Q. Let us hear it.

Mr. Geary: I was just going to say, Mr. Examiner, that I believe the question has been asked and answered, and [fol. 260] the witness, to my recollection, testified that there never was such a situation.

By Mr. Scoll:

Q. You mean that Encinal has never insisted that you bring the cargo over to Encinal's dock after you have unloaded it at Ninth Avenue?

A. Certain cargo, yes.

Q. Did you do that?

A. Yes.

Q. And you absorbed the drayage cost?

A. We did.

Q. Now, Mr. Geary asked you about saving the drayage cost when you delivered cargo at Ninth Avenue. Did you mean, when you said that you saved the drayage cost, when you delivered it at Ninth Avenue, that you saved it because the consignee was willing to accept delivery at Ninth Avenue?

A. I would say in those cases that we did save it if he was willing to accept delivery at Ninth Avenue, and I might add that that also has a bearing on whether or not the vessel discharges direct at Alameda. It is one of the factors.

Q. We are talking now only about those occasions when the vessel does not call direct at Encinal, but discharges at Ninth Avenue.

A. Possibly I should correct a statement I just made. I believe you put the question: Has Encinal ever insisted on [fol. 261] certain cargo being drayed over there? I think that is erroneous. My answer to that was erroneous in this respect, that if was the consignee of the cargo who insisted on it being delivered there, for reasons of their own.

Q. You mean that Encinal never directly made a request on you to dray the cargo over to Encinal dock after you had unloaded it at Ninth Avenue?

A. That is correct.

Q. But sometimes the shippers have made such a request—the consignees?

A. Yes, the consignees.

Q. Which consignees?

A. California Packing Corporation, for one; Hunt Brothers——

Q. What cargoes of Hunt Brothers would be involved in such a situation, what commodities?

A. Canned goods.

Q. Consigned to whom?

A. To Hunt Brothers.

Q. Shipped to Hunt Brothers and consigned to Hunt Brothers?

A. I believe the shipper is Hunt Brothers.

Q. Any others?

A. Those are all that I can think of offhand.

Q. Now, Mr. Geary asked you a question about a toll charge paid at the Howard Terminal on cargo billed to Howard Terminal but discharged at Ninth Avenue. Now, I believe you have testified earlier in this proceeding that [fol. 262] there was only one toll charge assessed at any of the ports under the jurisdiction of the Port of Oakland, is that correct?

A. That is, in so far as Outer Harbor and Ninth Avenue are concerned. I am not certain what the arrangement is as far as Howard is concerned.

Q. Did you ever pay two toll charges where you had cargo that was billed to Howard but delivered to Ninth Avenue?

A. I answered that I did not know.

Q. If you made such payments frequently you would know about it, wouldn't you?

A. Yes; the shipments are extremely rare.

Q. Few and far between?

A. Yes.

Q. But it is your business to know when such shipments are made and when such payments are made?

A. Well, the bills pass through my office.

Mr. Scoll: That is all.

Examiner Basham: Any further questions?

Mr. Townsend: I have a question or two.

Recross-examination.

By Mr. Townsend:

Q. Mr. Bushnell, I am not clear yet with respect to who receives the revenue for the car loading of gondola cars at Encinal Terminals when your vessel calls directly at En-
[fol. 263] cinal Terminals and discharges some of this jumbo roll cargo that you mentioned. Now, that is handled, as I understand it, directly from ship's tackle into the open car, is it not?

A. Yes, sir.

Q. Is that handled by the crew of the vessel?

A. It could be handled either by the crew of the vessel or by the longshoremen employed by the vessel.

Q. In other words, whoever handles that is really employed by the vessel?

A. That is true.

Q. Who receives the revenue for that car loading operation?

A. The McCormick Steamship Company.

Q. The McCormick Steamship Company keeps that revenue, so far as you know?

A. They do.

Q. When cargo from the Pacific Northwest is billed to the Encinal Terminals, but is delivered to the consignee at the Ninth Avenue dock, does the McCormick Steamship Company pay Encinal Terminals any dockage charge?

A. Not to my knowledge.

Q. As I understand it, the McCormick Steamship Company does pay the Encinal Terminals a service charge?

A. That is right.

Q. Why does the McCormick Steamship Company pay Encinal Terminals a service charge and not a dockage charge in that case?

[fol. 264] A. I don't believe I am qualified to answer that. I would rather you would ask that of Mr. Burley.

Q. You stated, I believe, that when cargo billed to Howard Terminal from the Pacific Northwest is delivered to the consignee at Ninth Avenue dock, no service charge is paid to Howard Terminal, is that correct?

A. Yes.

Q. Why does McCormick Steamship Company in that case pay no service charge to Howard Terminal, but in a

similar case, when the cargo is billed to Encinal Terminals, they pay a service charge to Encinal Terminals?

A. I think Mr. Burley answered that this morning in his testimony.

Q. I did not hear him answer it.

A. I would prefer that he did answer it, as being better qualified to answer it.

Mr. Townsend: All right. I will ask him. That is all I have.

By Mr. Geary:

Q. With respect to the Hunt Brothers' shipments that you mentioned, isn't it true, Mr. Bushnell, that there are accumulated on the Encinal Terminals shipments of Hunt Brothers which may be consolidated into pool cars of canned goods containing everything from berries to peaches? [fol. 265] A. That is my understanding of the situation.

Q. Therefore, on a shipment of canned goods consigned to Hunt Brothers from, let us say, Seattle, the reason that they would insist on delivery at the Encinal Terminals would probably be due to the fact that Hunt Brothers were accumulating carloads of canned goods there to be shipped, let us say, in the intercoastal trade?

A. That is true.

Q. And as the Encinal Terminals were being served by more than one intercoastal carrier, it would be more advantageous to Hunt Brothers to have it accumulated at Encinal Terminals, rather than to give it to the McCormick Steamship Company for intercoastal transportation?

A. That would be the correct line of reasoning.

Q. And it would be that type of reasoning that would necessitate you, under those circumstances, making the drayage from Ninth Avenue to the Encinal Terminals?

A. That is correct.

Q. Would you say that the same thing was true with respect to the California Packing Corporation?

A. I would say that it was, from what I know of their method of operation.

Mr. Geary: That is all.

Redirect examination.

By Mr. Scoll:

[fol. 266] Q. Now, is this Hunt Brothers' cargo always drayed from Ninth Avenue to Encinal?

A. It is not. Certain of it goes direct to their Hayward plant.

Q. You talk about these cars of a variety of canned goods; are you talking about pool cars?

A. I don't know whether they would be designated as that or not.

Q. These cars are Hunt Brothers' cars and they are delivered to you and transported by you and re-delivered as cars, are they not? You don't break them up?

A. In many cases they are merely LCL shipments, as far as we are concerned.

Q. But they are delivered entirely to Hunt Brothers?

A. Yes.

Q. How often did you say they were drayed over from Ninth Avenue to Encinal?

A. That is something else that would have to be checked for an accurate statement.

Q. Well, is it something that happens every day?

A. We don't have that many boats.

Q. Does it happen once a week?

A. Possibly once every two weeks.

Q. If that happens once every two weeks, however—that is confined to Hunt Brothers, isn't it? In other words, you [fol 267] don't dray cargo from Ninth Avenue to Encinal, for all your consignees to whom you give Encinal billing?

A. That is true.

Q. Just a few of them?

A. Those that request it. . .

Q. I asked you, is it few or many?

A. I would say a few.

Mr. Scoll: That is all.

Recross-examination.

By Mr. Geary:

Q. You don't do it generally, because it is more economical for the McCormick Steamship Company not to do it, isn't that true?

A. That is true.

Redirect examination.

By Mr. Scoll:

Q. And the consignees accept delivery at Ninth Avenue?

A. That is true.

Mr. Scoll: That is all.
Mr. Geary: That is all.
Examiner Basham: You are excused.

(Witness excused.)

Mr. Scoll: Mr. Burley.

R. F. Burley resumed the stand and testified further as [fol. 268] follows:

Direct examination.

By Mr. Scoll:

Q. You have been previously sworn, have you not, Mr. Burley?
A. Yes.
Q. I show you now a memorandum addressed by Mr. James A. Lunny, vice-president and director of operations, to you, dated June 23, 1936. Will you read that over, please?
A. (Witness complied.)
Q. Do you recall having received that memorandum?
A. Yes, I do.

Mr. Scoll: I would like to offer it for the record.
Mr. Geary: I will make the same objection that I have heretofore made, Mr. Examiner, to the effect that this is an inter-office communication between two representatives of the McCormick Steamship Company, and as such is not binding on the Encinal Terminals.
Examiner Basham: It will be received as Exhibit No. 26. Objection overruled.

(The memorandum referred to was marked "Commission's Exhibit 26" and received in evidence.)

By Mr. Scoll:

Q. Now, this letter is very short and I want to read it to you and ask you a question or two about it. This is from [fol. 269] Mr. Lunny, and it says:

"Yours of June 19th regarding Encinal Terminal calls coastwise.

"We appreciate the situation intercoastally and realize we will have to continue to call at Encinal Terminal for coastwise cargo. However, do you think there is any chance of taking any part of the action that we discussed at our evening meeting, that is, elimination of service charge when vessels do not call at Encinal Terminal because of insufficient quantity, etc."

Now, first, Mr. Burley, what was your letter of June 19th regarding the Encinal Terminal calls? Do you recall that letter?

A. I don't know. I would have to see it. I don't remember it.

Q. Well, do you recall the discussion that Mr. Lunny refers to, which you and he had about these terminal service charges?

A. I remember it in general.

Q. Now, what action did you and he discuss?

A. The question of whether we might eliminate the payment of the service charge when we didn't call our ships at Alameda, from the standpoint of saving expense to our vessels.

[fol. 270] Q. Saving the service charge?

A. Yes.

Q. And what did you and he propose to do?

A. Well, the only proposal was that in this exhibit, where he asks what I think we can do, and I told him.

Q. Did you discuss how you were going to do it?

A. No, because that letter or memorandum clearly indicates there wasn't any decision reached. We just talked about it and that memorandum calls for a decision.

Q. He says:

"However, do you think there is any chance of taking any part of the action that we discussed * * *"

that is, the elimination of the charges.

Now, you and he certainly discussed some method of bringing about an elimination of the charge, didn't you?

A. Not necessarily. He brought it up from the standpoint of what it cost the vessel.

Q. I know he brought it up.

A. And I answered what I thought we should do about it.

Q. How were you going to do it?

A. Well, the way it worked, by not doing it.

Q. Now, what methods did you discuss to eliminate the charge?

A. Well, one way——

Mr. Geary: Now, just a moment. I am not particularly [fol. 271] interested——

Mr. Scoll: I think the witness is following my question.

Mr. Geary: I don't think he is.

Mr. Scoll: Oh, yes, he is.

The Witness: Well——

Mr. Geary: Just a moment, please.

If this were an investigation of the McCormick Steamship Company, it might be a different situation, in so far as the discussion which took place——

Mr. Scoll: Not so far as the facts are concerned, Mr. Geary.

Mr. Geary: Just a moment, Mr. Scoll——

Examiner Basham: Let us not have so much argument. Read the question back.

(The question referred to was read by the Reporter.)

Mr. Geary: I am objecting, not only to the question, Mr. Examiner, but to the entire line of questions as to what discussion took place between Mr. Burley and Mr. Lunny.

Examiner Basham: Objection overruled.

A. Well, I will have to admit my memory is not so good that I know everything we talked about in that particular meeting.

By Mr. Scoll:

[fol. 272] Q. Let us have your memory about the service charge. That is all we are interested in here. You have stated that you and he discussed the elimination of the charge. Now, how did you intend to eliminate that charge? How did you intend going about eliminating it?

A. The only way I would have known then, or know now, to do it, would be to cancel the rates in the tariff except on direct call.

Q. And did you and he discuss, or did you consider at that time, that if you were to eliminate this service charge by canceling the direct calls in your operation, that it

would have any effect on your getting business from Calpack?

A. We discussed what effect it would have on our getting business from the Encinal Terminals.

Q. That is not my question.

A. Not specifically the California Packing Corporation. They are not the only account at Encinal Terminals.

Q. You carry tonnage for Calpack in coastwise and intercoastal—in both your coastwise, intercoastal, and also your offshore service, don't you?

A. Yes.

Q. Did you discuss any or all of that tonnage and the possibility of losing it if you dropped the Encinal billing?

Mr. Geary: I submit that the question has been asked and answered, Mr. Examiner.

[fol. 273] Mr. Scoll: No, it has not been answered.

A. I can answer it the way we did. We discussed the California Packing account and all other accounts that operate out of Encinal Terminals.

By Mr. Scoll:

Q. I am confining myself to the Calpack account.

A. I couldn't say at this time that we discussed that account specifically. My memory doesn't go back that far.

Q. You mean that you don't think that when you discussed, or when you considered eliminating this service charge, that you considered the possibility of losing Calpack's business on all your services?

Mr. Geary: That is certainly argumentative, Mr. Examiner.

Mr. Scoll: I am asking whether that was in his mind or whether he discussed it with Mr. Lunny.

Mr. Geary: I think we ought to draw the line, in all seriousness, some place, and when the witness says he discussed California Packing Corporation as one of the shippers or one of the consignees of cargo over the Encinal Terminals, I think that is an adequate answer to the question. You cannot limit it, as Mr. Scoll is very obviously apparently trying to do, to limit this particular question to the California Packing Corporation alone.

Mr. Scoll: I am not. All I want to bring out, Mr. Exam-

[fol. 274] iner, is to find out whether the McCormick offi-

cials, in considering the elimination of this service charge, considered not only whether they would lose the Calpack's business coastwise, but also the Calpack's business that they carried in their other services.

Mr. Goary: Then I object to the restriction of this thing to the California Packing Corporation, because that is not the witness' testimony.

Examiner Basham: Objection overruled.

By Mr. Scoll:

Q. You think you have fully answered my inquiry on that?

A. I have answered it to the best of my ability.

Q. Now, after you and Mr. Lunny discussed this elimination, did you take it up with the Encinal people?

A. I did not.

Q. Have you ever discussed with the Encinal people the elimination of this service charge where the vessel does not call at Encinal and where the cargo is discharged and delivered at Ninth Avenue?

A. I don't recall any discussion since we renewed calling our vessels there in December—was it 1936 or 1935?

Q. And you still pay the service charge?

A. Yes, sir.

Q. Do you pay them a dockage charge?

A. No, only when vessels call.

[fol. 275] Q. Do you pay any other terminal service charge when you do not call there or discharge or deliver cargo there?

A. I don't think we do. I don't know of any case.

Q. Encinal is the only one?

A. Yes.

Examiner Basham: Just exactly what do you mean by a service charge? What is the nature of the service? Is it for dockage, or handling, or wharfage, or what?

The Witness: It is comparable to a wharfage charge at some ports. There are ten individual items that go to make up the service charge that were brought out in the California Railroad Commission's recent hearing, but it takes in trucking, it takes in lights, it takes in the pier rental, everything in the way of overhead, the maintaining of clerical forces, and everything on the dock to operate the facilities.

Examiner Basham: That is an over-all charge for all terminal facilities?

The Witness: That is right. Up in Portland and Seattle for the same service there is a charge, and it is called a wharfage charge, but it covers identically the same thing.

By Mr. Scoll:

Q. Now, Mr. Burley, you do a considerable amount of business with the California Packing Corporation in all your services, do you not?

[fol. 276] A. Yes, we do.

Q. You wouldn't like to lose that business, would you?

Mr. Geary: What difference does that make, Mr. Examiner? I object on the ground that it is incompetent, irrelevant and immaterial.

Examiner Basham: I think that is a proper question.

A. I wouldn't want to lose it as long as it is profitable business.

By Mr. Scoll:

Q. And you would do anything that is within reason that you could to hold that business, if you had to?

A. As long as it was legal and I still had some margin of profit.

Mr. Scoll: That is all.

Cross-examination.

By Mr. Geary:

Q. I wonder if you would mind, Mr. Burley, for the purposes of the record, giving us the various charges by tariff designation that are assessed against a ship or against a cargo in calling at the port of Oakland?

A. I will have to ask a question before I can answer that. Do you mean calling at Ninth Avenue at Oakland, or calling at any Oakland dock?

Q. Let us take it at Ninth Avenue first, and then we will [fol. 277] take it at the other docks.

A. Ninth Avenue is a different situation than the others because of this assignment that we have with the Port of Oakland.

Mr. Geary: I appreciate that.

Mr. Scoll: I am willing to stipulate with you that the tariff of the Port of Oakland can be put into this record. In fact, we are going to offer it a little later on.

Mr. Geary: Has that got a definition of what the service charge consists of?

A Voice: Yes.

By Mr. Geary:

Q. Now, in view of the fact that the service charge has been involved in this situation, we will take up a delivery at Encinal Terminals by one of the McCormick ships calling direct. The charge as made against the McCormick Steamship Company by the Encinal Terminals on such a ship would be what? A dockage charge?

A. The ship would pay a dockage charge; the ship would pay a service charge. As far as I can recall, all the other charges would be assessed against the cargo. There would be car loading, if such was involved; there would be tolls; and there would be demurrage, if the cargo stayed on the dock after the free time.

Q. Now, taking the situation with respect to the Mc- [fol. 278] Cormick Steamship Company's operation at its own dock at Ninth Avenue with one of its own vessels, what charges would you eliminate from the charges that you have already given?

A. Well, there actually isn't any elimination. As I testified yesterday, that service charge is still extant in so far as our ships are concerned.

Q. Would there be a dockage charge paid in that case?

A. I believe so.

Q. Against the ship, for the privilege of coming alongside the dock?

A. Yes.

Q. That would go to whom, the McCormick Steamship Company?

A. Oh, no. I will have to ask—the Port of Oakland receives it.

Q. And then the McCormick Steamship Company would get the car loading, if the car required car loading?

A. We would get the car loading, yes.

Q. And the demurrage, if there was any demurrage, would go to whom?

A. The Port of Oakland.
Q. The Port of Oakland?
A. Yes.
Q. Now, if the McCormick Steamship Company called one of its vessels direct at the Outer Harbor dock, would those charges likewise be assessed against the ship and the cargo?
[fols. 279-548] A. It would be identical with Encinal.

* * * * * * * *

[fol. 549] HOWARD G. ADAM was thereupon called as a witness for the Commission and, having been first duly sworn, testified as follows:

Direct examination.

By Mr. Scoll:

Q. Will you tell the reporter your name, please?
A. Howard G. Adam.
Q. What is your occupation?
A. Traffic Representative, Port of Oakland at San Francisco.
Q. What are your duties?
A. Solicitation of cargo; generally representing the municipality of the Port of Oakland.
[fol. 550] Q. How long have you occupied that position?
A. About six and a half years.
Q. On or about January 26, 1939, were you soliciting tonnage to make up a sufficient quantity for direct call at Oakland by the MS Cadrella?

Mr. Jones: Will you have the record show that Mr. Adams is here under subpoena from the Commission?
Mr. Scoll: Oh, yes.

A. I was.

Mr. Scoll: Mr. Adam is here under subpoena.

By Mr. Scoll:

Q. How much cargo were you soliciting for that particular shipment?
A. Well, on the European vessels we are accustomed to try to secure a minimum of 150 tons for east bay call. In other words the European Conference Regulations call for

a minimum quantity of that amount to make a call at our dock.

Q. Did you have a part of that minimum already committed?

A. I did.

Q. But you still needed to get a certain amount?

A. That is true.

Q. How much did you need to get?

A. Oh, roughly 25 tons.

Q. And did you solicit the A. V. Williams Company for that 23 tons?

[fol. 551] A. I did.

Q. To whom did you speak there?

A. Mr. Hinde.

Q. And did Mr. Hinde tell you you might solicit the Frank Wilson Company for that amount of tonnage?

A. That is true.

Q. And did you solicit the Frank Wilson Company?

A. I did.

Q. And were the goods delivered to Outer Harbor?

A. That's true.

Q. And then what happened?

A. A day or so later I received a telephone call from—I believe I had lunch with Mr. Hinde and Mr. Hunter of Frank M. Wilson, and at that luncheon I was informed that there were difficulties and Encinal was aware of the shipment, and that they thought that everything would be cleared up, but that Encinal were annoyed and had learned that the shipment was moving to the Outer Harbor Terminal or had moved to the Outer Harbor Terminal.

Q. Well, what happened at this particular shipment?

A. About the following day Mr. Hinde telephoned me and asked if we wouldn't release the shipment to the Encinal Terminals. It was a rather unusual procedure, and I asked why. And he stated that Encinal had threatened to write a letter to Chicago and it might mean the loss of his position.

[fol. 552] Mr. Geary: I am going to object to that, Mr. Examiner, upon the ground it is hearsay, unless it is the purpose of Mr. Hinde to——

By Mr. Scoll:

Q. (Interrupting:) Did he tell you that?

A. He did.

Q. You are testifying to actually what he told you?
A. Yes.

Mr. Geary: Even so, that would not eliminate it from the realm of hearsay, Mr. Examiner.

Mr. Scoll: I am not seeking to prove that Mr. Hinde was going to lose his job.

Mr. Geary: Nor are you seeking to indicate that Mr. Hinde has authority to bind the Encinal Terminals by any such statement. Is that correct?

Examiner Basham: Objection overruled. Go ahead, Mr. Scoll.

Mr. Scoll: I am merely asking the witness to repeat the conversation.

By Mr. Scoll:

Q. Was this tonnage subsequently transferred to Encinal?
A. It was, according to my understanding.
Q. And how was it transferred?
A. By truck, I believe.
Q. Did you make any effort to obtain how this trucking cost from Outer Harbor to Encinal was handled, or who [fols. 553-563] paid this trucking cost?
A. Yes. I was annoyed at losing the shipment, and I specifically asked Mr. Hinde if he was paying the cost of transfer from our dock to Encinal. He advised me that he was not.
Q. Did you make any other inquiries?
A. Yes. I asked the agents for the Donaldson Line, or particularly Mr. Brainard, of that company, if he was absorbing the cost of transfer, and I was advised that he was not.
Q. Did your Port of Oakland pay the transfer cost?
A. Not to my knowledge.

* * * * * * *

[fol. 564] T. G. Differding was thereupon called as a witness for the Commission and, having been first duly sworn, testified as follows:

Direct examination.

By Mr. Scoll:

Q. Mr. Differding, will you give the reporter your full name, please?

A. My name is T. G. Differding; business address San Francisco, California.

Q. In this proceeding your services have been engaged in the Maritime Commission as a special expert?

A. That's right.

Q. Have you prepared a statement?

A. I have.

Q. Will you read the statement?

A. I have had twenty-one years experience in traffic and transportation matters. Starting in 1919, I was employed in various capacities by the Southern Pacific Company at points on its Western Division for nine years; then three [fol. 565] years in industrial traffic work for the Standard Sanitary Manufacturing Company which also included some six months in charge of plant production; then about two and one-half years in charge of rates and operations for one of the major common and contract motor truck carriers in northern California, Oregon and Nevada which included the making of cost studies on truck operation; then one and one-half years with the Parr-Richmond Terminal Corporation, a respondent in this proceeding, as Traffic Manager as well as handling operations during part of this time; then about five months as Secretary of the Marine Terminal Association of Central California, comprised of public utility wharfingers on San Francisco Bay who are respondents in this proceeding; then one year as Assistant Engineer in the Transportation Department of the California Railroad Commission which time was devoted almost exclusively to an investigation and development of cost studies on the operation of public utility wharfingers on San Francisco Bay for rate-making purposes and the establishment of rules, regulations and practices in connection therewith; then three and one-half years as Manager of the Traffic Department for the Oakland Chamber of Commerce. On January 15 of this year I returned to the California Railroad Commission as an Examiner in the Transportation Department and at the moment am on a leave of absence, being temporarily employed by the United States Maritime [fol. 566] Commission.

In this proceeding the United States Maritime Commission is going over the same ground, at least to some extent, that the California Railroad Commission did in 1935-1936, except that here the Maritime Commission has also named the publicly owned and/or operated marine terminals as

respondents. As the result of many extended hearings and conferences, involving many of the private operators as well as some of the public operators, which had from time to time dealt with certain phases of marine terminal operation it was necessary for the California Railroad Commission to institute an investigation on its own motion into the rates, rules, regulations, tolls, charges, rentals, classifications, contracts, practices and operations, or any of them, of the privately owned and or operated marine terminals on San Francisco Bay, in order that the problem as a whole would be reviewed and appropriate orders issued.

Dr. Ford K. Edwards, then employed as Transportation Economist for the California Railroad Commission, was assigned the task of making a study and report with recommendations to the Commission in the investigation known as C. R. C. Case No. 4090. I was employed by the California Railroad Commission as an Assistant Engineer to assist Mr. Edwards.

After more than three months of study we prepared a document entitled "Preliminary Report Providing a Statement of the Marine Terminal Problem in the San Francisco [fol. 567] Bay Area, With Supporting Data, Case No. 4090" which was introduced in that proceeding as Exhibit No. 1.

Before proceeding with my testimony, I should like at this point to introduce in this record a copy of that preliminary report just referred to.

Mr. Townsend: May I ask for what purpose this exhibit from the Railroad Commission Proceedings is introduced? In other words, what I desire to know is what evidentiary value it has in this proceeding; whether it is offered for the correctness of the facts therein set forth, or just for what purpose is it offered and what part of that report is to be considered as evidence in this proceeding.

Mr. Scoll: All of it is being offered at this time for the purpose as just stated by Mr. Differding.

Mr. Townsend: Well now, that is not clear. Can you make that a little clearer for the record? I don't know that it appears in the record yet exactly what this exhibit is.

Mr. Scoll: San Francisco Bay area as it was surveyed by the California Railroad Commission at that time. It is offered for that purpose.

Mr. Townsend: Is it offered for the correctness of the conclusions therein set forth?

Mr. Scoll: Yes, it is.

[fol. 568] Mr. Townsend: That report, Mr. Differding was prepared at what date?

The Witness: January 14, 1936, and purports to set forth the situation as Dr. Edwards and I found it on that date.

Mr. Townsend: And your investigation was made during what period?

The Witness: For three months prior to January 14, 1936.

Mr. Townsend: And the situation with respect to the terminals in the Bay Area has changed considerably since that time, has it not?

The Witness: Yes, sir. And I intend to touch upon that.

Mr. Townsend: I object, Mr. Examiner, to the introduction of that document as setting forth the facts at the time, and I would in that connection——

Mr. Scoll: (Interrupting) It is not offered to set forth the facts at this time.

Mr. Townsend: You are offering it as setting forth the facts. May I ask this further question in support of my objection: Have you, Mr. Differding, made any further field investigation of the Terminal situation in the San Francisco Bay area within the last two months?

The Witness: No, sir. What studies I have made have [fol. 569] been confined to those possible since February 6th, which was the day I started employment with the Maritime Commission, and they have been very limited. However, I will touch upon that later.

Mr. Townsend: My objection, Mr. Examiner, goes to this extent: I have no objection whatsoever to Mr. Differding setting forth and stating in this record any of the facts, but, I think it is improper for him to try to set forth those facts by introducing his conclusions as the result of a study which was made in the latter part of the year 1935, when, admittedly, the facts have changed greatly since that time.

Mr. Scoll: Mr. Differding——

Mr. Townsend: And I think it would be much better if he could set forth the facts as they are at this time rather than trying to set them forth by an exhibit which was introduced in another proceeding some four years ago.

By Mr. Scoll:

Q. Mr. Differding, you assisted in the preparation of this report, did you not?

A. Every part of it.

Mr. Jones: Mr. Examiner, might I ask Mr. Scoll under what section of the Shipping Act we are proceeding in this discussion of wharf demurrage?

Mr. Scoll: Any pertinent provisions of the Shipping Act [fol. 570] of 1916 as amended.

Mr. Jones: As I understand it, the California——

Mr. Scoll: (Interrupting) And I would suggest, if you have any objections as to the conclusions that may or may not be reached, you have excellent opportunity to present them in argument.

Mr. Jones: No, I have not stated my point yet, Mr. Scoll. As I understand the call of this hearing, it was limited to Sections 15, 16, 17 and 20 of the Shipping Act; and I cannot find any provision in any of those sections which touches upon the rates of terminal operators. On that ground, Mr. Examiner, I object to the reception of this report and any other testimony on the subject of wharf demurrage on the ground that it is incompetent, irrelevant and immaterial.

Mr. Townsend: May I make this further statement, Mr. Examiner? It is my understanding that this study that is now being offered, namely, exhibit No. 1 of the California Railroad Commission, case No. 4090, covers many subjects in addition to wharf demurrage, which is the subject, as I understand it, that is now under discussion.

That is correct, is it not, Mr. Differding?

The Witness: It covers all phases of terminal operations, that is, those conducted by the private terminals in San Francisco Bay as of 1936. However, I want to point out [fol. 571] that there has been a great deal of discussion already on this record as to various other types of charges, and this explains them, I think, in quite a detailed extent. My testimony, however, in this proceeding, is directed towards the wharf demurrage matter and its related subject: Free time.

Mr. Townsend: Then, is this offer of this exhibit to be limited to the portion thereof concerning wharf demurrage?

The Witness: I don't know what counsel's pleasure is.

Mr. Townsend: And free time connected therewith.

The Witness: I don't know what counsel's pleasure is, but my purpose was to put it all in in its entirety.

Mr. Townsend: May I ask this further question:

At the time the United States Maritime Commission was making its investigation, did not the California Railroad Commission by statute specifically have jurisdiction over the reasonableness of the charges of the private terminals that were under investigation?

Mr. Scoll: I don't think the witness has to answer that question. That is a conclusion of law. And I might add that the longer we take in stating argument that could very well be stated later on brief, the longer this proceeding is going to last. I think we had better go on.

[fol. 572] Mr. Townsend: May I say——

Examiner Basham: Just a moment. I think I have heard enough. The objections I have heard seem to go to the weight of the evidence rather than the admissibility, so I will admit the exhibit as exhibit No. 60.

(The document, preliminary report of the California Railroad Commission, referred to, was marked "Commission's Exhibit No. 60" and received in evidence.)

Mr. Kilkenny: Mr. Examiner, I want to make the same objection that has been voiced here by Mr. Jones on behalf of the Respondents whom we represent, representing the State of California and the Board of Harbor Commissioners. I make the same objection, and particularly I want it to apply to the admission of this exhibit now offered.

Mr. Jones: To save time, may it be understood that my objection then goes to this whole line of testimony?

Examiner Basham: Yes.

Mr. Kilkenny: And may it be understood that my objection goes to this whole line of testimony?

Examiner Basham: Yes, sir.

Mr. Townsend: I would like to have that same understanding.

Examiner Basham: Yes, sir.

Mr. Vaughan: On behalf of all the parties you represent, Mr. Townsend?

[fol. 573] Mr. Townsend: Yes.

Examiner Basham: Proceed, Mr. Differding.

The Witness: It was the desire of the California Railroad Commission to treat with the marine terminal problem in two steps. The first step was to prepare and present a statement of the problem and based upon such facts necessary to support a preliminary analysis. Exhibit No. 60

was submitted as such a statement. The second step was to be the preparation of a final report with recommendations based upon the completion of a thorough and exhaustive analysis by the Commission's staff and the presentation of evidence by all interested parties during the hearings. As will be indicated during my testimony both of these steps were followed in very minute detail.

The data appearing in Exhibit No. 60 was drawn from various sources, including field surveys of the respondents' facilities, interviews with executives and officers of the private and public marine terminals, steamship companies, stevedoring companies, warehouse companies, and other interested parties, and the testimony and exhibits involving marine terminals directly or indirectly, those were all examined, together with the tariffs and annual reports filed by said respondents.

We found that the principal problems facing the terminals were insufficient revenues and the diversion of tonnage from [fol. 574] one port to another through the absorption of differences in transportation costs with competing facilities.

Part I of Exhibit No. 60 consists of 129 pages and presents the problem as it existed in 1935 under 22 topic headings, and Part II presents supporting data from pages 130 to 185 together with 14 tables and 2 maps under 21 topic headings.

We were unable to find any guiding set of principles which had been used in the determination of rates or charges assessed against the two users of the terminal services, namely, the carriers on the one hand and the shippers and receivers of cargo on the other hand. No record could be found of any cost analysis used to develop and justify existing rates, with the exception of some cost studies prepared for the purpose of showing inadequacy of wharf demurrage and car-unloading charges. Practically every rate or charge was questioned by some party as being unreasonably low, or too high, or otherwise improper.

As stated at pages 8, 9 and 12 of Exhibit No. 60, it appeared essential that in order to arrive at a fair and reasonable basis of charges for the respective services offered by the terminal operators, there should be determined, first, the specific cost of rendering the various services, and secondly, the value of each service to the user—in other [fol. 575] words, what the traffic will bear. In addition, competition and tradition were two more factors found pres-

ent in the terminal picture and which could not be ignored.

As Exhibit No. 60 is not in any way involved in the explanation and discussion of the various topics covered therein, and as my testimony is largely, if not entirely, in connection with wharf demurrage and/or wharf storage together with the matter of free time, I shall confine myself to the latter subjects.

At pages 61 to 65 of Exhibit No. 60, we discuss the matter of wharf demurrage and wharf storage. All of the general cargo terminal operators in the San Francisco Bay Area claimed the existing charges were unsatisfactory and none were able to or even desired to recommend them because of their depressed level. However, the fact is that no changes of any consequence have been made in the rates or charges since 1935 to date because of certain factors, even though the rendering of the service has become more expensive.

Mr. Geary: May I break in? Are you, in your statement, going to designate what you mean by the words "certain factors" as having prevented changes of any consequence later on in your testimony?

The Witness: Yes, I intended to do that. I will do it now, if you want.

[fol. 576] Mr. Geary: No. It is all right.

The Witness: In our conclusion we expressed the belief that wharf demurrage charges should be upon a compensatory basis and that the shipper or receiver should be required to indicate by some method or other whether he wanted his goods held on wharf demurrage or moved into wharf storage on a period basis plus a handling charge, so that the losses to the terminal operator and the gamble he is required to take upon the length of time the goods remain on the terminal would be removed. Tables Nos. VII to XIV inclusive of the exhibit show a comparison of wharf demurrage charges and warehouse storage charges after expiration of the free time period on specific commodities and Cargo, N. O. S. as assessed by the San Francisco Bay terminals and warehouses and the Port of Stockton. The wide differences in charges then appearing in the existing charges are apparent and such differences are still generally in effect.

At pages 66 to 67b of Exhibit No. 60 we discuss the matter of free time which is the period allowed for assembling cargo

for outbound water movement or for removing cargo discharged from water craft before the assessment of wharf demurrage or storage charges.

This subject has been of concern to the terminal operators, as beginning with an allowance of 3 or 5 days, free time has been extended for one reason or another to ten days [fol. 577] and in certain circumstances to twenty-one days. In fact, certain of the terminals publish in their tariffs an indefinite or unlimited free time period when vessels are delayed under specified conditions or otherwise. Thus, without any compensating revenue, the most valuable operating space on the floor of the transit sheds is deprived of any effective use in the latter case and to a material extent in the former case. Here we took occasion to suggest that the free time period should be shortened to less than the existing 10 days. A comparison of free time periods at various Pacific Coast ports is indicated at page 67a. And that includes ports beyond San Francisco Bay. In so far as San Francisco Bay terminals are concerned, what is there shown for 1935 is still in effect today.

Four months after our preliminary report on the marine terminal problem on San Francisco Bay was prepared (received in this proceeding as Exhibit No. 60) we completed the further analysis of the problem and submitted a final report to the California Railroad Commission, entitled "Final Report Providing Recommendations in the Matter of the Marine Terminal Problem in the San Francisco Bay Area, with Supporting Data, Case No. 4090", and which was introduced in that proceeding as Exhibit No. 14.

At this point I should like to introduce in this record a copy of our final report just referred to.

[fol. 578] Mr. Townsend: I desire to make the same objection as heretofore made.

Examiner Basham: Overruled. It will be received as exhibit No. 61.

(The Final Report referred to was marked "Commission's Exhibit No. 61" and received in evidence.)

The Witness: As stated in our letter of transmittal which appears at the front of Exhibit No. 61, we found the problems confronting the terminal operators to be primarily threefold, first, inadequacy of revenues, second, diversion of tonnage through absorptions, and, thirdly, discrimina-

tions between the various users of terminal services, because of unduly low rates or, in some cases, high rates.

Deficits were caused principally from sharply increased labor costs and rate reductions resulting from the keen competition between the various public and private terminal operators for ships and cargo.

The first problem of insufficient revenues involved the whole rate structure and as *been* previously *been* pointed out, we were entirely without any guiding principles of rate-making to follow in a proper and reasonable determination of this phase of the situation. It therefore, became necessary and we did make a thorough and complete analysis of the operating costs of each service rendered by the private terminal operators handling general cargo on [fol. 579] San Francisco Bay. This in turn necessitated a painstaking study of the proper and equitable division of terminal costs between the users of the facilities, particularly between the vessel and the cargo. In making the study we also had the able assistance of valuation and financial experts on the Commission's staff. We came to the conclusion that the proper factors upon which terminal rates should be based *w*here (1) the cost of providing the service, (2) the ability of cargo or vessel to pay, and (3) competitive conditions.

Upon such a study and a correlation of those three factors, we derived the rates for the various services which were recommended in our final report.

The construction and economic characteristics of each terminal rate and charge are set forth in full detail throughout the final report and summarized in Part III, Chapter IV.

We consistently followed our basic theory that those who used the facilities or labor furnished by the terminal should pay for that use, regardless of whether the cargo arrived by water, rail or truck. Upon following that doctrine through, we arrived at the conclusions and costs set forth in the final report.

As the exhibit shows in the table of contents, Part I contains recommendations as to rates, rules and regulations [fol. 580] under appropriate topic headings. Part II contains recommendations as to tariff absorptions and allowances, and Part III contains supporting data, and followed by a description of maps and diagrams inserted for purpose of illustra- and information.

With respect to the matter of wharf demurrage and wharf storage, we made a physical check of the terminals. Some of these checks covered previous checks made by days for twelve months to find out how much space was occupied by demurrage and storage cargo.

Mr. Townsend: May I interrupt for just a moment? When you refer to making studies of the terminals there in that last sentence, you referred to the private terminals, did you not?

The Witness: This is confined entirely to private terminals. We made no physical checks of the public terminals except that the facilities under assignment, or what you choose to call it at that time the San Francisco Terminals, now called the Golden Gate Terminals, and State Terminals, were using. We did make similar checks there. However, the matter of wharf demurrage and the incidental charges in connection with it, were entirely under the control of the State Harbor Board and we went no further than that. In other words, as far as those two facilities are concerned, it was confined to the services rendered other than the wharf [fol. 581] demurrage or storage matters.

Mr. Geary: Was that because the records were not available to you for illustration by the State Board of Harbor Commissioners, or the Port of Oakland and the Port of Stockton also? Those records were not available to you?

The Witness: That is correct. I don't recall that we specifically asked that from the Port of Stockton. I don't believe we did. But, in any event, we made no study.

Mr. Townsend: And did you make any study of the financial reports of the Public Terminals?

The Witness: No. As closely as could be judged, the floor space occupied by demurrage and storage cargo ran approximately 30 per cent of the shed area. However, in making the checks on the areas occupied by demurrage and storage cargo we found there was also included cargo which was still on hand within the free time period. We further found that some of the cargo was high piled by the terminal operator before the free time period had expired. It was our view in determining the proper cost for use of demurrage or storage areas, that demurrage or storage rates and charges should compensate only for those areas necessary after the free time period had expired, and also that when a toll charge is paid the cargo is entitled to sufficient space

upon the wharf during the free time period without being high piled.

[fol. 582] Accordingly, it was necessary to reduce the figure of 30 per cent by the amount of space that would have been saved had the cargo not been high piled and not within the free time period. The result was an average of 20 per cent of floor space being required to provide demurrage and storage areas within all of the transit sheds. This is referred to at pages 36 to 43 inclusive of Exhibit No. 61, which illustrates the division of terminal costs between the vessel and the cargo used in our study.

Turning now to Chapter VIII, pages 93 to 110 inclusive, of exhibit 61, which explains and analyzes wharf demurrage practices and costs as of 1935, we find little change in the practices or rates and charges today. There is no question, however, that all of the major elements of costs entering into the providing of this service have very materially increased since 1935, the only exception appearing to be carrying charges on the structures and land. It is expected that the respondents in this proceeding will bring the study down to date in this respect by testimony and exhibits from representatives of both public and private terminal operators. If, as we stated at page 93 of Exhibit No. 61, the wharf demurrage rate structure was absurd in 1935, then under existing conditions if falls far short of approaching a compensatory basis.

We found that one of the problems connected with wharf [fol. 583] demurrage was cargo remaining on hand beyond the free time period, where the terminal anticipating that it was going to stay there for a period of time, would high pile the cargo at a cost of approximately 20 cents per ton. Also incur certain other overhead costs of 5 to 10 cents per ton, yet on the following day have the shipper or consignee decide to remove the cargo thus leaving the terminal with a cost of 25 to 30 cents per ton and a revenue of 5 to 7 cents per ton.

The terminal operator is faced with a twofold problem: First, to adjust the rates to a compensatory level, which in some cases means upward, and in other cases downward; and second, to have the rates so reflect the costs incurred as to compensate the terminal regardless of the length of time the goods remain on demurrage or storage. At page 94 of Exhibit No. 61 we stated it was necessary that a minimum increase of 33 per cent in the rates for demurrage be made

if they were to be compensatory under the most favorable conditions.

In determining wharf demurrage costs there are several items to be considered, the first of which is the floor space cost. To do this we found the cost per square foot for every structure used by each of private terminals handling general cargo; subject to the explanation that I made in answer to your question a few minutes ago, Mr. Townsend.

In allocating floor space cost to goods on demurrage we [fol. 584] ran into the problem that an area chargeable to a ton of goods on demurrage is not covered by the goods as it rests on the floor. In other words, if a ton of cargo lies in a shed there has to be charged against that ton not only the area occupied by the goods itself but an additional sufficient aisle space by which a shipper or receiver can direct his motor vehicle unit to the pile, also there must be sufficient space for the jitneys and trailers of the stevedoring concern to operate in and reach the pile.

In practice 30 per cent of floor space chargeable to demurrage goods is used for aisle space, leaving 70 per cent of the *such* space to be covered. However, the 70 per cent is not all revenue producing 100 per cent the year around for the reason that demurrage goods may be honeycombed by partial deliveries leaving vacant space, or working areas required, or not piled to the economical height. These factors indicate a further waste of about 15 per cent of the balance of the floor space. We came to the conclusion that 85 per cent of the 70 per cent remaining after deducting aisle space could be considered as used to capacity the year around at all times, and which is probably high. This we arrive at 59.5 per cent of the floor space chargeable to wharf demurrage as the revenue producing area. We have used 60 per cent in our calculations. But this 60 per cent must carry the balance of 40 per cent. The ratio of 60 to 40 is [fol. 585] better, at least as far as we were informed at that time, than the ratio obtained by the average warehouse throughout the country.

The next step was to determine the cost per square foot by breaking down the costs of each of the shed structures used by the private terminals in which goods under wharf demurrage were held. The cheapest over-all cost for any one terminal was found to be 3.55 cents per square foot per month, and we have used that basis throughout our study. This was Howard Terminal and is accounted for by

the fact that the buildings are constructed on solid ground, of brick walls and composition roofs.

At the other terminals studied, we found the average cost per square foot of floor space higher because of more expensive construction costs. Where facilities are constructed upon filled land or upon piling to any appreciable degree, floor space costs rise materially.

The next step followed was to translate the floor space cost per square foot into cost per ton for the various commodities. To do so, it was necessary to ascertain the average height to which the stevedores would pile each commodity. Such heights varied widely depending upon the commodity considered. A table depicting the densities, pile heights and square feet required per ton for each of the principal commodities on wharf demurrage is presented on page 98 of Exhibit 61. However, there again that is as of [fol. 586] 1935 and part of 1936, and some of those pile heights, as the normal one-tier height that the stevedore or truck driver would pile the commodity on the dock, has been changed on certain commodities — of union labor conditions.

Other items of costs are explained at pages 100, 101 and 102 of Exhibit No. 61. First is the cost of checking one ton of wharf demurrage cargo to the consignee or from the consignor. The average cost was found to be 5 cents per ton for one checking, as the prior checking from the vessel or subsequent checking to the vessel was included in the service charge made against the vessel by the terminal.

The second item of cost was the high piling under different conditions and different commodities. Here the average cost on average commodities was found to be 20 cents per ton for piling the goods a second tier high, and an additional cost of 20 cents per ton when piling goods three tiers high. Such costs involve the use of high piling equipment and not the use of manual labor, other than that necessary to operate the high-piling equipment and move the front sacks backward for uniform piling. A tier is understood to mean that height to which the stevedores will pile the goods under normal conditions without employing additional labor. It appears that some changes have been made in the height to which certain commodities will be piled by stevedores today as compared with conditions in [fol. 587] effect during 1935. This would, of course, affect floor space and high piling costs when determining wharf demurrage costs.

By Mr. Scoll:

Q. What are these changes that you have in mind?

A. Well, I am referring here specifically to the less heights that the stevedores will pile certain commodities today as they did pile or stack the goods back in 1935. The other factors of cost are increases in the dock labor itself, in the dock clerks—that is, those employed actually on the dock, plus the clerical force in the office, plus other administrative expenses, supplies and materials. Those are the main items, the minor ones being payroll taxes, changes in payroll taxes, and increases in taxes on the structures and land.

Q. I was referring specifically to changes that you mentioned in heights to which certain commodities will be piled by stevedores today as compared with 1935. Do you have any specific commodities in mind?

A. I wasn't able to bring all my material here. I can answer that later on. I can't recall at this moment what I had in mind. But I will answer that question in some detail a little later. Does that answer your question?

Q. That is all right.

A. The 20 cents per ton figure just previously given represented the reasonable minimum amount of cost for piling a second tier of goods and breaking it down for sub- [fol. 588] sequent movement to the vessel or land transportation agencies.

High piling of goods on wharf demurrage does not always occur but nevertheless that is no indication that there is not some labor cost involved. Without high piling we found occasional miscellaneous moving of wharf demurrage cargo from one point to another in the transit sheds for various reasons such as providing proper aisle space for stevedoring equipment, clearing an area of small parcels of cargo for use in assembling or discharging large blocks of cargo for vessels scheduled to arrive, removing vacant space in honeycombed piles of cargo through partial deliveries by consolidating such piles, etc. The average cost of handling wharf demurrage goods not high piled was 2.5 cents per ton for this miscellaneous labor.

In addition to the floor space and handling costs, there are present certain overhead costs, which average about 16 cents per ton. We divided these costs into variable and non-variable. Some are incurred at the moment the goods

are placed on a wharf demurrage basis and remain the same regardless of the length of the demurrage period. Such items of expense are accounting and billing, cleaning and sweeping, auditing, etc., and therefore are considered non-variable. On the other hand, other items of expense *varies* with the length of time under wharf demurrage charges, such as watchmen. In other words, if goods re- [fol. 589] mained on hand for 60 days there would be twice the expense allocated for watchmen than for 30 days. It was necessary to break down the overhead costs on this basis so we could arrive at a proper receiving and delivery charge to cover the non-variable costs to the terminal at the time goods were first placed under wharf demurrage, which was found to be 7.10 cents per ton; and the other overhead costs varying with the period of time goods remain in demurrage, which was found to be 9.17 cents per ton per thirty days. This is indicated at pages 99, 100 and 101 of Exhibit No. 61. It will be noted we have taken the 31 items of overhead expense and broken each of them down to variable and non-variable, with three of the items termed 50 per cent variable and 50 per cent non-variable. That was upon the assumption that superintendence and administration is partly related to the handling costs which are non-variable and partly related to supervision over watchmen and other items of expense extending over the whole period of demurrage.

Taking the wharf demurrage costs just referred to, the difference in cost of high piling canned goods for a sixty day demurrage period and not high piling is illustrated on page 102 of Exhibit No. 61. In constructing wharf demurrage rates, we tested each commodity to determine the cheapest method of demurrage, that is, one tier, or two or three tiers high, based upon the most efficient and economi- [fol. 590] cal operation by the terminal. To do so, we took into consideration the average length of time each commodity remained under wharf demurrage charges. The results of this study for various commodities are shown in the table following page 103 of Exhibit No. 61, and which was the method we proposed and recommended to the California Railroad Commission for adoption by the private terminal operators on San Francisco Bay in charging and collecting rates on goods held on wharf storage. Each column of the table is fully explained on pages 103 to 105, inclusive, of the exhibit and needs no further comment.

At pages 105 to 108 we discussed at some length a type of wharf demurrage service rendered on certain accounts by the terminals which pyramided the delivery costs because of numerous small lots being called for out of one or more carloads, such service being substantially comparable to distribution from a public warehouse.

In connection with goods which stay one, two or three days beyond the free time period and not placed on a wharf storage basis, we recommended at page 108 of Exhibit No. 61 that a penalty wharf demurrage charge of 5 cents per ton per day be assessed until such time as the shipper or consignee shall declare the goods for storage. If not so declared after five days, the goods shall automatically go on a 15-day period wharf storage basis with a receiving and delivery charge.

[fol. 591] With respect to the matter of competition for goods held under wharf demurrage and storage, we have treated with this to some degree at pages 109 and 110 of Exhibit No. 61.

Turning now to the question of free time period for the assembling of cargo or removing cargo upon the wharves; this subject was discussed at pages 87 to 92 of Exhibit No. 61 and is, I believe, self-explanatory of the reasons for the proposed changes before application of wharf demurrage or storage charges. We here recommended that the private terminals adopt the San Francisco basis of free time with the exception of intercoastal inbound cargo, which it was felt should be reduced to 5 days instead of 7 days San Francisco. In addition, we recommended that the terminals on the east side of San Francisco Bay should limit the extension of the free time period to 3 days when for account of vessel delays instead of the existing unlimited extension under such circumstances. By "existing" that also includes the present time as well as 1935.

At pages 153 to 188 inclusive of Exhibit No. 61 we have set forth in full the expenses used in the construction of the cost studies which are embraced in the final report. In these pages under three separate headings are shown our determination and allocation of terminal costs, an index of expense items whose allocation is explained, and a state-
[fol. 592] ment of the principle of allocating each expense item together with an application of such principle. As stated at page 154, such previous cost studies as had been made in connection with one or two phases of terminal op-

eration, no attempt went beyond endeavoring to determine the direct dock labor with some arbitrary allowances for office overheads, etc. However, as stated in previous discussions in the final report, these unallocated overhead items have accounted for 50 per cent or more of all terminal costs. For us to ignore or make arbitrary allocations of these items would to a large extent nullify the purpose of a general cost study in which we were here engaged. Accordingly we painstakingly charged off every item of cost upon the basis outlined in Part III, Chapter I of Exhibit No. 61. To avoid errors of fact or judgment in so far as that might be possible, the explanation of our allocations of costs were submitted to interested parties up and down the Pacific Coast as well as in other sections of the country. Their criticisms, views and suggestions were all given careful consideration in our breakdown of terminal costs as used and applied to the operations as we found them.

The costs used were for the year 1935, except where average expenditures were required for several years. This was done because of the severe labor troubles and strikes of 1934 and the lower wage scales in effect prior thereto which [fols. 593-599] made any use of figures for earlier years inadvisable.

In the back of Exhibit No. 61 are three diagrams, showing first, a plan of Encinal Terminals. This facility remains the same today as it did in 1936; Second, a plan of Howard Terminal. This facility has been changed to the extent that the proposed transit shed indicated on diagram 2 has been built and put into operation, and pier 2 has been torn down and reconstructed, since 1936. Diagram 3 is a plan of Parr-Richmond Terminal No. 3 in which no changes have been made since 1936. This facility is the general cargo unit of the Parr-Richmond Terminal, the other three units being devoted largely, if not exclusively to the handling of special commodities. Immediately following the three diagrams is a map showing the location of practically all of the respondents' facilities now in operation on San Francisco Bay. The facilities known as Pier 45 in San Francisco and now operated by Golden Gate Terminal is indicated on the map as San Francisco Terminals. Another change since 1936 is that the facility indicated on the map as Rhodes-Jamieson, Ltd. is now the Standard Coal Company.

On October 13, 1936, the California Railroad Commission rendered its decision No. 29171 in Case No. 4090. Certain

portions of this decision has already been introduced into the record in this proceeding as Exhibit No. 7.

* * * * * * *

[fol. 600] My next exhibit is a document entitled "Proceedings of Twenty-Sixth Annual Convention Pacific Coast Association of Port Authorities, Oakland, California, August 23, 24, 25, 26, 1939." I should like to have that portion of the document starting at the upper left hand corner of page 46 with the words "The next paper on our program is Paper No. 8, 'Uniform Cost Accounting for Ports and Marine Terminals,' by Dr. Ford K. Edwards, Transportation Economist, California Railroad Commission,' and continuing through to the lower right hand column of page 50 ending with the words "I think we will get a lot of good out of it." The purpose of offering this exhibit is explained by the fact that it is explanatory of and supplementary to my next exhibit, which will be the cost formula referred to by Dr. Edwards at the middle of the right hand column on page 48 of the exhibit I am now offering.

[fol. 601] By Mr. Scoll:

Q. This statement of Dr. Edwards, Mr. Differding, is an interpretation, an accounting interpretation, of the various items that are contained in the so-called Accounting Formula?

A. That is correct. And I might add that the statement, as it appears in this document, was checked by me with Dr. Edwards and my next exhibit, the cost formula, also, and as that document also shows I fully concurred in the statements there made by Dr. Edwards.

Q. The next exhibit, in effect, supplements the Cost Formula with the explanatory comments as to the items in the formula; is that correct?

A. That is correct, and the emphasis being laid upon developing a uniform cost method of arriving at this same result as to the cost of performing specific services.

Examiner Basham: That will be received as exhibit No. 62.

Mr. Townsend: Before you receive it, I have just been handed a copy of this document called "Proceedings of the convention," and so on. What portions of that are you referring to?

The Witness: May we go off the record?

Examiner Basham: Off the record.

(Remarks outside the record.)

[fol. 602] Examiner Basham: On the record.

(The document referred to was marked "Commission's Exhibit 62" and received in evidence.)

Mr. Townsend: Mr. Differding, you are now about to introduce or offer in evidence certain evidence with respect to a cost study which, as I understand it, will consist of a formula for determining wharf demurrage costs and certain explanatory speech relating thereto. Is that in effect your offer?

The Witness: Yes, except I don't think it is a "speech". It is just a plain explanation of a Cost formula.

Mr. Townsend: As I understand it, the purpose of the Cost formula is to develop or attempt to develop costs of wharf demurrage to be used in connection with the determination of what would be a proper wharf demurrage charge. Is that correct?

The Witness: The formula, if it is followed as outlined, results in that or ends up with that result, as you have stated.

Mr. Townsend: In other words, the ultimate purpose is to develop the level of a wharf demurrage charge?

The Witness: No, no. It has nothing to do with the charges. It is to develop wharf demurrage costs.

Mr. Townsend: All right. Now, what interest has this Commission, if any, in your opinion, in the wharf demur- [fol. 603] rage costs?

The Witness: I am here to offer the formula. I don't think I am the one to answer that question.

Mr. Townsend: I certainly object, Mr. Examiner, until the relevancy of this cost data to this proceeding is developed. I make that observation and objection not in a spirit of trying to impede this investigation, but in the spirit of trying to shorten it and confine it to matters that are relevant. Now, if we are going to get into some cost formula, a theoretical cost formula that has no bearing or materiality on any of the issues in this proceeding, we are going to waste a tremendous amount of time because, if this matter is presented as it is now proposed to be presented, as I see it, it will be necessary for the terminals to

go back to their offices and spend a considerable amount of time in trying to prepare data to present in evidence along this line and to develop their own situation with respect to this cost data and anything else along this line that may be presented. It will necessitate, as I see it, a further hearing and possibly a considerable amount of additional evidence and controversy.

I think before we get into that, in the interests of everybody here concerned, it would be advisable to determine whether this has any relevancy to any issue over which the Commission has jurisdiction. I think that should be de-

[fol. 604] veloped before it is received in evidence.

Examiner Basham: Will you make a very brief answer to that?

Mr. Scoll: I think I can.

The cost of wharf demurrage has some relevancy and bearing upon the question of whether or not any particular wharf demurrage rate or practice is discriminatory or preferential or unreasonable to the extent of what would be considered unlawful under the Shipping Act of 1916. It is for that reason that Mr. Differding has prepared this material and will introduce further material on the question of wharf demurrage costs.

Mr. Jones: Might I point out, Mr. Examiner, that a public body is under no obligation to make money in its operation; that its essential purpose is to promote the development of the Harbor in the community that it serves, and that, consequently, they are not interested, as such, in the question of whether or not a particular rate is at cost or compensatory. It might well be promotional.

Mr. Vaughan: That is, of course, subject to whatever jurisdiction the Maritime Commission might have, your Honor?

Examiner Basham: The objection will be overruled and the exhibit will be received as exhibit No. 62.

We will have a short recess.

[fol. 605] (Whereupon a short recess was taken, after which proceedings were resumed as follows:)

Examiner Basham: Go ahead.

The Witness: I now wish to introduce the cost formula just referred to in connection with Exhibit No. 62.

Mr. Townsend: I desire to make the same objection as with respect to exhibit 62.

Mr. Kilkenny: May we have the same objection, too, Mr. Examiner?

Examiner Basham: Yes, sir. It will be received as exhibit No. 63.

(The cost formula referred to was marked "Commission's Exhibit No. 63," and received in evidence.)

By Mr. Scoll:

Q. You had better describe it.

A. This exhibit is entitled "A Formula for the Determination of Port and Marine Terminal Costs for Rate Making Purposes, by Ford K. Edwards, Transportation Economist, California Railroad Commission."

Q. Did you have something to do with the preparation of material in this formula?

A. Yes, sir; I did.

Q. And you worked with Dr. Edwards on it?

A. I checked the accounts with Dr. Edwards and clarified our views, which differed somewhat as to the continuity [fol. 606] of classifying the accounts as they are indicated on the exhibit. However, the viewpoints were all reconciled as stated in exhibit 62. I fully concurred in the formula as presented for the first time to this Port Association.

By the way, I have some more copies of this formula here if some of the parties want them.

As stated by Dr. Edwards at page 48 of Exhibit No. 63 this cost formula is patterned after that developed by the California Railroad Commission in Case No. 4090. Further that the principles of determining terminal costs in the cost formula are those we followed in studying the operation of Encinal Terminals, Howard Terminal, Parr-Richmond Terminals and State Terminal in Case No. 4090, and which were applied when reaching the conclusions stated in our final report and in evidence as Exhibit No. 61.

The cost formula consists of 18 pages and is largely self-explanatory. This is especially so when there is available the detailed accounting and cost finding data contained in Exhibit No. 61. The first one and one-half pages of the cost formula outlines the basic plan of the formula. The procedure to be followed in the use of the formula and the application of the seven schedules which make up the balance of sixteen pages is here explained. Each of the schedules have numerous footnotes which further clarify the use

and application of all the accounts chargeable to the different types of services rendered on a uniform basis [fol. 607] throughout. As indicated in Schedule A, the cost formula is set up to cover the separate costs for only two wharf units. However, should it be necessary to determine such costs for more than two units or services other than those shown on Schedule B, it is only necessary that the form be expanded by adding sufficient pages to cover any number of units or services. This cost formula was distributed and discussed with respondents' operating general cargo facilities some days ago, and I do not believe it necessary to make further comment.

I shall next offer some thirty-odd tariffs, published by the respondents', warehouse associations and terminals located at other Pacific Coast Points.

My next exhibit is entitled, "Tariff Charges of the Board of Harbor Commissioners of the State of California for San Francisco Harbor," et cetera.

Examiner Basham: It will be received as exhibit No. 64.

(The document above referred to was marked "Commission's Exhibit No. 64," and received in evidence.)

The Witness: My next exhibit is the letter from the Board of State Harbor Commissioners, signed by M. H. Gates, Secretary, under date of December 13, 1939, addressed to David E. Scoll, Attorney, Maritime Commission, Washington, D. C. It sets forth the handling and service charges [fol. 608] assessed and collected by the Islais Creek Grain Terminal Corporation for their account as explained by Witnesses Gates and Bell.

Examiner Basham: It will be received as exhibit No. 65.

(The letter referred to was marked "Commission's Exhibit No. 65," and received in evidence.)

Mr. Graham: May we have a copy of that in due course?

Mr. Scoll: Let the record show that we will withdraw it and have a copy made.

Mr. Graham: Thank you very much.

Mr. Vaughan: A copy will be furnished to us, please, Mr. Scoll?

Mr. Jones: That is to every one?

Mr. Scoll: Yes, to all respondents.

The Witness: My next exhibit is entitled "State Refrigeration Terminal Tariff, published by the Board of State

Harbor Commissioners for San Francisco Harbor," covering cold storage warehouse rates applicable to Pier 56.

Examiner Basham: It will be received as exhibit No. 66.

(The copy of tariff referred to was marked "Commission's Exhibits No. 66" and received in evidence.)

The Witness: My next exhibit is entitled "State Ter-
[fol. 609] minal Company, Ltd. Terminal Tariff No. 1," naming rates, charges, rules and regulations, and bears C. R. C. No. 1.

Examiner Basham: Received. Exhibit 67.

(The tariff referred to was marked "Commission's Exhibit No. 67" and received in evidence.)

The Witness: My next exhibit is entitled "Golden Gate Terminals Tariff No. 1, C. R. C. No. 1, naming rates, charges, rules and regulations."

Examiner Basham: Received. Exhibit 68.

(The tariff referred to was marked "Commission's Exhibit 68," and received in evidence.)

The Witness: My next exhibit is entitled "Port of Stockton Terminal Tariff No. 3," naming rates, charges, rules and regulations.

Examiner Basham: Received. Exhibit 69.

(The tariff referred to was marked "Commission's Exhibit No. 69" and received in evidence.)

The Witness: I might explain that those tariffs that are filed with the California Railroad Commission, I have checked their official files and find the copies here being introduced are correct. However, as to these public bodies, they have been furnished me with the understanding that they are true and correct copies of the tariffs in effect today.

My next exhibit number is entitled "The River Lines [fols. 610-616] Terminal Tariff No. 2-A, C. R. C. No. 37," and the United States Shipping Board No. SB-1- No. 7.

Examiner Basham: Received. Exhibit No. 70.

(The tariff referred to was marked "Commission's Exhibit No. 70," and received in evidence.)

The Witness: This exhibit is offered for the purpose of covering the operation of the River Lines at Sacramento.

The next exhibit is entitled "Board of Port Commissioners of the Port of Oakland, Tariff No. 1," naming rates, rules and regulations applying at municipal terminals of Oakland, California.

Examiner Basham: Received. Exhibit No. 71.

(The tariff referred to was marked "Commission's Exhibit No. 71," and received in evidence.)

* * * * * * *

[fol. 617] Cross-examination.

By Mr. Geary:

Q. Mr. Differding, will you state briefly for the record what your understanding was as to whether the recommendations of the California Railroad Commission tariff and traffic representatives which were advanced in the reports, exhibits numbers 60 and 61, ever became effective?

A. Well, the answer is yes and no, Mr. Geary. We will have to consider the separate charges.

Q. What was the general picture that followed the reports that were prepared by you and Dr. Edwards? The decision of the California Railroad Commission pretty [fol. 618] largely followed your recommendations so far as the rates that you recommended, is that not true?

Mr. Townsend: Just a minute. When you are through with the question I want to object.

Mr. Geary: I am through now.

Mr. Townsend: All right. I will object to that upon the ground that it is entirely incompetent, irrelevant and immaterial as to what the Railroad Commission did with respect to these recommendations. I think that we have the facts of record now, and I think that the question is what this Commission is going to do about it, and the Railroad Commissioners are not here to cross examine. I object upon the ground that it is incompetent, irrelevant and immaterial, and I think that the fact that the conclusions set forth in the decision that was offered were excluded as evidence should be further argument in support of my objection at this time.

Examiner Basham: The objection is sustained.

By Mr. Geary:

Q. Did the suggested changes of the California Railroad Commission become effective in the private terminal operators on San Francisco Bay?

A. No. To answer that, Mr. Geary, I will have to go down the charges first, the private operators of San Francisco Bay. In answering your questions, I have reference to the [fol. 619] deep water general cargo facilities.

Q. That is right.

A. And some of these facilities, such as South San Francisco Terminal Company, or whatever happens to the general cargo facilities, is of no interest to South San Francisco Terminal, and the reverse is true. But the general cargo facilities, taking first the Dockage charges, they were put into effect at the private terminals with the understanding that that is not true of the terminals at San Francisco, because that is under the control of the State Board of Harbor Commissioners. But the other terminals—Encinal, Howard, West Coast, Eldorado Terminals, Parr-Richmond Terminals—the dockage charges as found proper by the Railroad Commission were shortly thereafter put into effect. In that matter the terminals found that on some commodities in certain trades that the recommended service charges could not be assessed and they petitioned the Commission for relief from the order, in which the public terminals, such as the Port of Oakland, concurred, and there were some adjustments there. But after some period of time there were some increases made in the wharf demurrage charges; not necessarily speaking generally to the level that the Commission found reasonable, but there was an upward revision.

I have previously stated that, so far as wharf demurrage is concerned and free time, there have been no changes [fol. 620] generally speaking at all. There have been some specific commodities where there has been an increase. I think one is automobiles that I can recall at the moment, and at the same time there may have been offsetting reductions in other things. I would have to look at the tariff to answer you clearly on that. But the matter of car loadings were not touched upon by the Railroad Commission in its decision. However, the terminal operators, plus the so-called independent car loaders, with the tremendous increase in labor costs found it necessary to petition the Railroad

Commission for authority to increase the car loading charges which were subsequently put into effect.

Well, that covers the major elements. The others are some accessorial charges and the others are the same as they were ten years ago.

Q. Is it not true that the action of the private terminals to obtain additional revenue was blocked or stymied by the refusal of the public authorities to come along?

A. Pardon me. In answer to your previous question first, the other major items, tolls, they all found they needed more money last December, and they slapped on ten cents more per ton, so they are all getting it now, and which was the recommendation of the Railroad Commission; that is, all public and private terminals put it in.

Q. At the time that the order became effective or that the [fol. 621] order was issued by the California Railroad Commission, rather, is it not a fair statement to say that the action of the private terminals in increasing their rates, because they could be compelled to increase their rates by the California Railroad Commission, was blocked or stymied by the refusal on the part of the Public authorities to come along with the proposed increases?

A. Yes. I think that is the answer to the reason that there were some four-odd years passage of time before the Commission's decision and the putting in the increased toll charges, and up to the present time there has been no unanimity of apparently opinion or action by the public and private operators with respect to wharf demurrage charges and free time.

There is one exception to that however. That is, the El Dorado Terminal Company took the Commission's decision and embodied it in whole in their tariff. However, in so far as wharf demurrage is concerned, they have never had anything under wharf demurrage, so it doesn't mean anything. Nevertheless, the tariffs do show a 100 per cent compliance with the Commission's order, but, it is a matter of paper rates and not actual movement for handling of commodities.

[fols. 622-626] Q. Do you recall whether in that proceeding, in addition to the objection that was advanced that the California Railroad Commission did not have jurisdiction over the public terminals, there was also the objection that it did not have jurisdiction because of the fact

that the cargo was interstate cargo rather than intrastate cargo?

A. Yes. That was voiced to the Commission.

Q. As an objection?

A. Yes.

Q. Against any prescription of rules by the Railroad Commission?

A. I want to say I am not sure that it was voiced on the record. I know it was voiced to Doctor Edwards and myself as field men making studies, but I don't know whether that was actually voiced in the record of the proceeding itself. I can't say that, Mr. Geary, but it was then to Edwards and myself off the record.

Q. In your investigation and preparation of your reports?

A. That's right.

Mr. Geary: That is all.

By Mr. Graham:

. . . . . .

[fol. 627] By Mr. Geary:

Q. Mr. Differding, referring to wharf demurrage, what generally would you say was your criticism of the present condition that prevails in the San Francisco bay area concerning the wharf demurrage charges of the terminals which are respondents in this proceeding?

A. Well, there is a great deal of difference in the charges between the terminal operators. There are specific exemptions which make the differences a great deal more pronounced. But, generally speaking, taking, for example, the so-called "penalty" wharf demurrage on your San Francisco piers, as the tariff of the Harbor Board which has been introduced as Exhibit 64 here shows, they charge 25 cents per ton per day weight or measurement, whichever will yield the greater revenue, for the first five days or a part thereof. That is their general merchandise N. O. S. item.

Mr. Graham: That is westbound.

A. (Continuing) And that is applicable to the movement [fol. 628] of cargoes into the wharves for some further movement by water or by land, as compared with a two-cent per ton per day rate at the Eastbay Terminals.

Q. You read a few moments ago, as I recall it, the State Board of Harbor Commissioners' charges, being 25 cents per ton per day. Is that correct?

A. No, pardon me. I should have said 25 cents per ton weight or measurement for the first five days or part thereof as compared with a two-cent per ton per day at the Eastbay Terminals, and what applies generally at the Eastbay Terminals is also in effect at the Port of Stockton.

By Mr. Graham:

Q. May I stop you just a moment? Isn't that rate a westbound rate and not an eastbound rate?

A. Yes. It is for cargo coming into the piers.

Q. From vessels?

A. From vessels.

Q. Can you tell us what it is eastbound?

A. In the eastbound direction the charge is different. There is 2½ cents per ton weight or measurement whichever will yield the greater revenue for the first five days or part thereof, and then 5 cents per ton per day thereafter. To make the story complete, as far as the cargoes moving into the wharves by water beyond the first five days of wharf demurrage, it is 50 cents per ton for each succeeding period [fol. 629] of five days. However, there is what is called the bulkhead storage which, at the discretion of the chief wharfinger, is applied at the rate of 12½ cents per ton weight or measurement for each seven days or part thereof. That is a discretionary charge and there is no criteria set up as to what has to happen for the exercise of the wharfinger's discretion, except that it is restricted to this extent: That it has to be cargo which is assembled, not removed by the vessel, such as rejected, left over, or overbooked, or outbound cargo in transit received prior to assembling date of vessel; charge to commence when cargo was placed on pier and continue until receiving date of vessel; and, thirdly, inbound cargo in transit pending final disposition; charge to commence at expiration of free period and to continue until cargo is lifted or removed from pier.

However, it is to be pointed out in this instance that the State Board has some charge of some description against the cargo or vessel at all times and does not entirely waive it as the Eastbay terminals provide in their tariffs and as

the Port of Stockton provided in their tariffs up to the first of this year when they made some radical changes in the language used in the wharf demurrage items, and now that similar unlimited extension has disappeared.

By Mr. Geary:

Q. What particular area of the facility is considered to be [fol. 630] available for the so-called bulkhead demurrage?

A. I think the chief wharfinger is the best man to answer that. I don't know. At the time I was on some of these steamship piers I found different situations; apparently oftentimes at the wish of a cargo owner who was moving the cargo or steamship operator. I don't know of any set pattern. I was never informed that there was any.

Q. But it is not limited, for illustration, to a portion of the dock facility which may be exposed to wind and weather?

A. No, unless that happens to be those commodities which could be put in open areas without suffering any damage from the elements.

Q. But cargoes that would suffer damage from the elements in reality would receive the benefit, perhaps, of that storage inside a covered transit shed?

A. Oh, yes; surely.

Redirect examination.

By Mr. Scoll:

Q. You mentioned there that the application of the bulkhead storage rate is within the discretion of the wharfinger.

A. Yes sir.

Q. Now, does he determine whether the cargo shall carry the wharf demurrage rate or the bulkhead storage rate?

A. The tariff so provides and, as I recall the testimony of the Witness Gates, he confirmed what is stated in the [fol. 631] tariff. It is at the discretion of the wharfinger in exercising his judgment as to whether it shall or shall not be granted, having in mind these three stated conditions here.

Q. Then the tariff does not specifically provide when bulkhead storage is available and when the cargo would have to be charged at the demurrage rate?

A. No. It is not set up in the usual type of a public utility tariff in determining that. This tariff is dated

effective December 1, 1925, and has been in effect for years and years and it has grown up like Topsy and, no doubt, served the purpose many years ago.

Q. When you stated that it was not set up as it usually is in a public utility tariff, what do you mean by that statement?

A. I have reference to those utilities that have to file their rates and charges with some regulatory agency when all this discretion of some official or employee of that utility can be used in determining whether charges are or are not to be applied. They have to be specific. So anybody can understand what they are to be charged and what for.

Q. What storage rate among the private utilities that are under the jurisdiction of the California Railroad Commission would be comparable to the bulkhead storage rate in San Francisco?

A. Well, stated generally, there are only two or three items in the private terminals which have some sort of a [fol. 632] period basis of storage, and that is generally longer than seven days or five days as set forth here. The general practice is to assess storage in the Eastbay terminals on a per day basis as is the situation at both Stockton and Sacramento also.

Re-cross examination.

By Mr. Somers:

Q. Mr. Differding, referring to the State tariff from which you have been quoting, does your copy bear the notation "Amended to February 1, 1938"?

A. Yes. However, the copies that I put into the record here, Mr. Somers, have been amended as to December 1, 1939. However, I should state, so far as this tariff is concerned, on the face of it it says, "Effective December 1, 1925, Amended to" (and then in pencil) "December 1, 1939." But the fact is that some of these rules and in some instances the charges, have not been effective since December 1, 1925, even though they are printed in here, and they do not reflect the correct effective date of some of these charges. For example, over here on page 22 they show these special rates for fertilizer and fertilizer material and general commodities. Those rates, even though printed, were not effective December 1, 1925. They were put in more

or less in recent years to meet what the State Harbor Board felt was Eastbay competition.

Q. On that same page, page 22, there are specific de- [fol. 633] murrage rates shown effective at the Grain Terminal and at the State Products Terminal, are there not?

A. Yes. I was referring to the latter block of rates in my previous answer.

Q. My point is that there are specific rates at the State Terminal and at the Grain Terminal which do not come under the general category of demurrage rates, to which you have been testifying.

A. Yes. I have in mind—Mr. Geary's question was confined to the assigned piers in San Francisco. These are the exceptions. You have I don't know how many piers here, but far in the majority of the assigned piers of the individual steamship lines, and then they have these two terminal companies where they have provided some N. O. S. rates as well as some specific commodity rates to meet competition as they have found it in other areas.

Q. Can you tell me in the tariff where that reference is made specifically to bulkhead demurrage?

A. Yes sir.

Q. As against wharf demurrage?

A. I was referring to the last paragraph on the bottom of page 19 and the first three conditions thereto appearing at the top of page 20.

Q. Reference is not made therein to specifically bulkhead demurrage? It is simply wharf demurrage, is it not?

[fol. 634] A. Yes. That's what they call it there. But, anyway, it has been the common characterization of that type of charge. I don't know how it was derived. I think some of their earlier tariffs stated it as bulkhead demurrage, bulkhead storage. That is what I meant, Mr. Somers: Bulkhead storage or demurrage.

By Mr. Vaughan:

Q. Mr. Differding, do you know whether or not the State Terminal Company in San Francisco assesses a handling charge in connection with any freight in storage on wharf demurrage?

A. Yes sir. The tariff which has been introduced into this record shows a handling charge on cargoes N. O. S. and I believe it is cotton and one or two other commodities.

and a handling charge is also shown at the Golden Gate Terminal for cotton. What happens on other commodities I am not celar, but they have it confined with a rather long explanation to only one commodity, which is cotton at the Golden Gate Terminal.

Q. Those handling charges are retained by the Golden Gate and the State Terminal Company, and the storage and other port charges are turned over to the Board of Harbor Commissioners; is that correct?

A. Yes, because the handling charge is a physical use of labor and they employ the labor and retain whatever profit there may be in it.

Q. Do you know whether or not in connection with any [fol. 635] storage under wharf demurrage by the Board of Harbor Commissioners at facilities other than 45 and 56 there are any handling charges assessed?

A. Well, there are.

Q. I am referring to storage in the open docks.

A. On the open docks?

Q. The assigned docks.

A. No. There are no handling charges on the assigned docks. I understand, however, that there are instances where the chief wharfinger in exercising his discretion on this so-called bulkhead demurrage or bulkhead storage sometimes requires that in the granting of that privilege that the ship or the ship representative or the cargo bear the cost of high piling those goods in order to conserve the space. But except in those instances, which might occur how frequently, I don't know, there is no handling charge or high piling charge or anything involved in the ordinary storage or demurrage on the assigned piers.

Q. Let us go to the other side of the bay and take up first the Port of Oakland. Do you know whether or not in connection with storage of freight under wharf demurrage any charge is made by the Port of Oakland for handling service?

Mr. Scoll: Mr. Vaughn, I wonder whether perhaps those questions could not very properly be addressed to the offi- [fol. 636] cials of the terminals involved? I am planning to call each one of them.

Mr. Vaughan: I have no objection. I thought I would ask the questions in view of the fact that these tariffs were introduced through Mr. Differding. But if it is your wish I shall defer my examination.

Mr. Scoll: I only suggest it as a matter of saving a little time.

Mr. Vaughan: Very well. That is satisfactory with me.

A. However, I should mention that in addition to the other types of storage we have another one at the Port of Oakland in the Interharbor area where they have a building designated as "Terminal Building C", where space is rented or leased at so much per square foot, which I would call as 3 cents per square foot, and that is not supposed to involve any labor. This building is removed from the transit sheds and their tariff specifies, I think it is, 60 cents per ton when they perform the physical transfer of the goods between the dock and this terminal building. That's something which is a little different again from the general practice.

By Mr. Graham:

Q. Mr. Differding, in connection with this subject that Mr. Vaughan asked you about—that is, cost of high piling [fol. 637] and moving goods from one place to another for bulkhead storage in San Francisco—do I understand you that the determination of whether the goods shall first be moved from their ordinary place on the dock to another place for bulkhead storage and the determination of whether they shall be high piled at an extra cost is up to the wharfinger in each instance?

A. That is my understanding. In other words, in some instances the chief wharfinger in exercising his discretion as to the granting of the so-called bulkhead rates will ask whoever is responsible for the storage whether it is the vessel or the cargo to high pile it or move it from one place to another, to either save space or clean up some areas that may have some small blocks of cargo.

Q. Or he may not do it?

A. Or he may not do it. That, again, is in his discretion.

Q. There isn't any rule one way or the other?

A. No sir.

By Mr. Townsend:

Q. Mr. Differding, you referred to two types of cargo, as I understand it, on the docks in San Francisco: 1. The cargo which is there under regular wharf demurrage charges; 2.

The other is the so-called bulkhead storage. Is that correct?

A. Yes. But be a little more specific than we were the [fol. 638] last time on that. You are referring now to the assigned piers for all?

Q. Let us confine it to the assigned piers first. Are those two types of cargoes placed in the same area or placed right intermingled with each other; do you know?

A. Well, I have found them so in the few limited times I have checked that point, but I am not the best authority on that. I believe Mr. Gates could enlighten you with what might be the general situation over all these piers. After all, I only made some spot checks, I think it was on about four or maybe five piers, and they have some 50 of them along the waterfront.

Q. Perhaps you can answer this question. Do you know whether the method of handling cargo is the same between the ship and the pile on dock regardless of whether the cargo is to be placed on wharf demurarge or under bulkhead storage?

A. Generally that is true, that the same practices are followed. However, there are instances where the cargo when it is coming in, it is known if it is going to remain there quite some time, and if the permission of the chief wharfinger for the lower bulkhead rate has been secured the economic thing to do is to immediately and in one continuous operation take it off the ship and put it up to its desired height if that is going to be required.

Mr. Scoll: You are still talking about the San Francisco [fol. 639] Board of Port Commissioners?

The Witness: The assigned piers; yes sir.

Mr. Scoll: I want to say again that I am planning to call Mr. Gates and ask him some specific questions about these operations in San Francisco. I think perhaps it might be better to address direct questions that relate to the operations of each of these individual terminals to the people who are most familiar with them.

Mr. Townsend: I just have a few questions here I want to ask. I want to see what Mr. Differding has to say on them. It will only take me a minute.

By Mr. Townsend:

Q. In the case of that last operation to which you refer, where it is placed directly in bulkhead storage from the

vessel, do the stevedores handle it directly from ship's tackle to the place of rest in bulkhead storage?

A. That is the usual practice, yes.

Q. Let us go over to the other side of the bay.

A. My answer is being limited to those observations that I personally made on probably half a dozen or five piers out of the entire number of assigned piers on the water front.

Q. With respect to Encinal and Howard Terminals, did you testify that sometimes cargo which is in transit is placed in one of the warehouses?

A. Well, I don't know whether we mean the same thing by [fol. 640] "in transit," but the practice is to put the goods into warehouse whether it happens to be coming in by land transportation for subsequent distribution or coming off of a vessel to go from the transit area into the warehouse area and there be distributed by some land transportation or, there again, it might go out by water.

Mr. Scoll: What terminal are you talking about now?

The Witness: Encinal Terminals.

By Mr. Townsend:

Q. Does that apply to both Encinal Terminals and Howard Terminal?

A. Yes. They both have the public warehousing operations on their terminal facilities.

Q. Let us take the case of Encinal Terminals.

Mr. Scoll: I still repeat, Mr. Examiner, since we are planning to call each of these terminals, the operating or traffic managers of each of these terminals, that questions specifically directed to the operations of the individual terminals ought to be addressed to those people rather than to Mr. Differding, who has already stated that he only made spot checks on their operations and whose purpose in appearing here is to describe the work that was done by the California State Commission in the San Francisco bay area, and introduce the tariffs and offer general information.

[fol. 641] Examiner Basham: That is enough. Don't you think that would be a better suggestion?

Mr. Townsend: Mr. Examiner, here is an expert on terminal matters.

Mr. Scoll: But you are not asking him questions of opinion.

Mr. Townsend: Pardon me a minute. He has made, as I understand it, an investigation and has put in here a very detailed and elaborate study, and I have just a few questions that go to some of these fundamental questions. I simply want to ask him one or two more questions. I think if Mr. Scoll will let me ask them it will take less time than argument on the matter.

Examiner Basham: Go ahead.

By Mr. Townsend:

Q. With respect to Encinal Terminals, Mr. Differding, it is a fact, isn't it, that there is a so-called warehouse that is really a part of the transit shed?

A. Yes, sir. At the present time that public warehouse area or space is located within transit shed number C and they perform the usual public warehouse functions. And I might mention at this time that Exhibit No. 85 in this proceeding indicates that Encinal and Howard Terminals are parties to it the same as the uptown warehouses.

[fol. 642] Q. Is cargo handled directly between ship's tackle and that warehouse in transit shed C of Encinal Terminals by the stevedores?

A. No sir.

Q. How is that handled, do you know?

A. Well, the warehousing area is blocked off and shut out from all of the open transit space and the stevedores don't enter that facility any more than they do some of the private facilities of these lessees of terminal operators. At least, that has been my observation. If there are exceptions to it, I know of none.

Q. So that in every instance that you have observed at Encinal Terminals, before any cargo is placed in that warehouse in transit shed C it is first taken from ship's tackle and placed at a pile on the dock in another part of the transit shed and then removed by other employees from that pile on the dock into the warehouse space?

A. Yes sir.

Q. Is that last operation that I have described true with respect to cargo handled at Howard Terminal from ship's tackle to space in the warehouse?

A. Well, at the time that I made the physical checks of the transit sheds of Howard, there was no goods on ware-

housing rates in the transit sheds. But, as I endeavored to previously state, they do have in their filings with the Rail-
[fol. 643] road Commission two transit shed units also incorporated in their public warehousing operations, and they can if they wish, set up the ordinary warehousing operations within those transit sheds similar to Encinal. But at the times I made the checks, as far as I knew, I couldn't find any warehouse goods within the transit sheds at those times that I happened to be there. So I can't say anything further in answer to your question on that.

Q. What is the situation with respect to goods, if you know, that are stored in some of the back warehouses at Howard Terminal with respect to whether they are handled directly between ship's tackle and that warehouse space by stevedores?

This is my last question.

A. No, they do not. Those buildings are quite a distance removed from the last transit shed and the stevedores before 1934 never went that far.

Examiner Basham: Any further questions?

(No response.)

You are excused, Mr. Differding.

(Witness excused.)

Mr. Vaughan: May I ask for a discussion off the record?
Examiner Basham: Yes. Off the reocrd.
Examiner Basham: On the record.
[fol. 644] Mr. Scoll: Colonel Allin.

B. C. Allin resumed the stand and testified further as follows:

Direct examination.

By Mr. Scoll:

Q. Have you been sworn?
A. I have.
Q. Are the rates which are published in Stockton Terminal Tariff No. 3 introduced as Exhibit 69 filed with the California Railroad Commission?

A. Only as a matter of information.

Q. Are you familiar with this final report in Case No. 4090 prepared by Dr. Edwards and Mr. Differding, which has been introduced in the record as Exhibit No. 61?

A. Only in a general way. I have never made a detailed study of it.

Q. I want to read to you a brief portion of that Exhibit and ask you a question about it. On page 95 in Chapter 8, the following statement is made: "To sum up it must be noted that out of a given area chargeable to demurrage, whether it is one square foot or 50,000 square feet, 30 per cent of that area is necessary for aisle space and of the balance only 85 per cent is used to that capacity upon which the tariff charges herein recommended are predicated." [fol. 645] Then it sets out a formula, "Total demurrage areas 100%." That is made up of aisles and roadways 30%, cargo areas 70%, and of the cargo areas there are waste areas of 15%, and revenue producing areas equals 85% of the 70%, or 60%. That, I believe is the method by which he arrived at 60% as the area which is useful or useable for wharf demurrage. Would you say that was true of Stockton?

A. I am not certain whether he takes out the large alleyway which is used by trucks which come inside the building.

Q. He has deducted 30% for alleyways and roadways. Do you think that that is approximately right?

A. I think so. I think that is reasonable.

Q. And for waste areas about 15% of the useable cargo area?

A. I believe that is feasible, yes.

Q. You would say that probably 60% is nearly correct?

A. I would think so.

Q. Have direct labor costs increased at Stockton Terminal since this decision was issued, May, 1936?

A. They have.

Q. That would include handling costs?

A. Oh, yes.

Q. How much of an increase, approximately?

A. I don't recall, but I would say probably anywhere from one-eighth to one-fifth.

[fol. 646] Q. In other words, from about 12½ to 20%?

A. Probably so.

Q. And cleaning costs, checking costs similarly?

A. Yes. In fact, all operations generally have increased in cost.

Q. What about the efficiency of labor used in terminal operations? Has that increased or decreased?

A. We have found no difference at Stockton. We have found that our men are going along on as efficient a basis as they did previously.

Q. Do they do the same amount of work on an hourly basis as they did in 1936 per day?

A. I would say that in their general operations, I believe from the comment of stevedoor foremen as well as our own people, that they do at Stockton. I believe we have comparably a favorable situation.

Q. They are paid on an hourly basis, direct labor?

A. Yes.

Q. Payroll taxes, for instance, they have increased since 1936, have they not?

A. Well, we don't have any of that.

Q. Social security taxes?

A. We have none of that. Our employees are prohibited from receiving that benefit.

Q. What other costs do you think have gone up since [fol. 647] that time?

A. Construction costs have gone up, of course. I would say that the replacement of facilities, if that becomes involved, would be more expensive than it was before.

Q. What factor did you consider in establishing the wharf demurrage rate?

A. Picked out of thin air; the rates more or less charged down here without any rhyme or reason otherwise.

Q. In other words, competition is the primary factor?

A. Yes. Competition is the entire thing.

Q. You think that is the proper basis on which the wharf demurrage rates should be established, based on your experience in terminal operation?

A. No, I do not. I think wharf demurrage rates should be based on the fact that the wharf demurrage should not be a revenue producing factor in a transit shed on a wharf. It should be considered only a nuisance and the charge should be a penalty sufficiently higher than comparable storage elsewhere adequate to move the freight.

Q. Nevertheless, of course, the revenues from wharf demurrage are included in the general revenues of the terminal, are they not?

A. I would say comparable to the fine for parking an automobile on the street. I think it is just a fine more [fol. 648] or less. We don't look at it as a revenue producer. I would say it was a quite minor revenue producer in our case.

Q. You would not establish a rate that would be below the cost of the service, would you, in any given case?

A. Unless competition forced me to, I certainly would not. I would make it high.

Q. What are the free time provisions in your tariff? Do you recall them?

A. They are up to ten days free time.

Q. And that is for all trades?

A. Yes.

Q. Do you have exceptions?

A. Oh, no. I would say, just roughly, that that is universal in our case, as far as I know.

Q. No difference in free time for special commodities?

A. Not that I recall offhand. There might be but I doubt it. (Examining exhibit.) Oh, yes. We have certain exceptions. I see here certain bulk—we have, for example, an exception on chrome ore due to the fact that the nature of this commodity seemed to require 30 days for the assembling of a shipment.

Q. Is that an outgoing shipment?

A. That is an outgoing shipment and does not use covered storage. It is outdoor storage.

Q. Do you have many shippers of chrome ore?

[fol. 649] A. We have only one. We have no shipper of chrome ore at the moment.

Q. Have you any other exceptions?

A. No, no.

Q. Are there any other exceptions?

A. No, no. There are no exceptions.

Q. Do you know whether it is a practice among the terminals in the San Francisco Bay Region to be lenient in the granting of free time, interpreting their tariff provisions to that effect?

A. Well, I believe the free time problem on freight which comes in by water is quite different from the problem on freight which comes in to go out by water.

Q. Let us take the outbound first.

A. In the case of the freight which goes out by water, as I understand the method of application, it is the intent

that the 10-day free time provision to prevent shippers from placing their freight on the wharf more than ten days before the scheduled sailing of the vessel. However, if they place it there within the ten days and then the vessel is delayed, I understand that it is not the practice to assess. In fact, we have recently waived considerable demurrage charges of that nature because we have been advised that it is the policy today to do so and it is our feeling that there [fol. 650] should be some definite arrangement made.

Q. Are you speaking now of a particular vessel and particular allowances of extra free time on certain occasions?

A. No. I am speaking of delay to all the vessels, oh, during a rush period of September, and from that time, during the strike, for example, in December and up to date.

Q. Do you mean to state that those extra free time allowances are within or outside the provisions of the tariff?

A. The tariff provides that the port may grant an extension of free time equivalent to the delay of a water carrier due to stress of weather, accidents, breakdowns, or other emergencies. We understand that the "other emergencies" is construed to mean as being late.

Q. That is the tariff you are reading from now?

A. Yes, sir. And I understand the provisions in the other tariffs are fairly comparable.

Q. And you construe that to mean that "other emergencies" would cover just ordinary lateness of the vessel?

A. I understand that is the way it is construed in San Francisco Bay.

Q. Do you construe it that way?

A. I do now; yes, sir.

Q. Since when?

A. Since I found that that was the way it was being construed today.

[fol. 651] Q. When did you find that out?

A. About two weeks ago; two or three weeks ago.

Q. Was that in connection with a particular vessel?

A. That happened to be, yes.

Q. What was the vessel?

A. That was—the inquiry I made had to do with the LENA LUCKENBACH, which I believe was five days late, and the query was put to me regarding our position in demurrage charges and I investigated. I had my associates investigate the Bay and I understood the policy here

was to waive those charges, and we consequently waived them.

Q. And have you ever waived charges similarly in any previous time?

A. Yes. We waived some charges which had been somewhat in dispute, but only in the last two months. Previously we had been collecting them, although we had not had very much of it.

Q. Would you say, then, from your knowledge, that there has been a general practice in the San Francisco Bay Area to be lenient in the assessment of demurrage charges where the vessels are delayed?

A. I don't know whether leniency is the word. Perhaps they have adopted the correct policy. In other words, the purpose of the demurrage is to discourage the shipper from putting his goods on the wharf too far in advance and I believe they have allowed a certain latitude as a [fol. 652] reasonable operating factor for the vessel, and that is the way it has been construed as I understand it.

Q. So in the particular instance of the LENA LUCKENBACH, you just did what you found necessary to give your shippers the same kind of treatment that the other shippers in the Eastbay were receiving?

A. That is so; and in this particular case of outgoing shipments the policy would be for the ship to have to pay that expense, and we would not like to be in a position of having the ships charged for this sort of thing at Stockton unless they were similarly charged at the Bay.

Q. What about inbound cargo? Does the same situation apply?

A. No, it is not. I believe the shipper is billed quite strictly if he does not move his freight within ten days.

Q. Does Stockton operate public warehouse facilities adjacent to the transit sheds?

A. Yes, we do.

Q. Will you describe those facilities?

A. Well, we have 12 brick warehouses which are not physically connected with the transit sheds. They are separated and they are used for the storage of goods that are not in interstate or foreign commerce or elsewhere leased out to other public utilities, such as the Haslett Warehouse Company.

Q. You say they are not attached to, but they are separated?

[fol. 653] A. Yes.

Q. How are they separated?

A. Well, they are separated by a distance of a hundred foot roadway.

Q. Is that a public roadway?

A. Yes.

Q. And you mentioned that certain of these warehouse spaces are leased out. Are any of them leased for industrial purposes?

A. Processing do you mean?

Q. Yes.

A. The nearest that I could come to that would be brandy storage, which is merely a case of aging the brandy. The brandy has to stay there about four years. One of these units is leased to the Haslett Warehouse and it is filled with brandy.

Q. Well, what is the term of the lease?

Mr. Townsend: Pardon me, just a minute. I object to that question, Mr. Scoll. The witness has already testified that that traffic or the goods in those warehouses, are not in interstate or foreign commerce. Obviously, this Commission has no jurisdiction over them and I do not think it is relevant.

Mr. Scoll: That is the witness' conclusion.

Mr. Townsend: And I don't think it is relevant to go [fol. 654] into matters of that kind at this time.

Mr. Scoll: I am sure that the witness was merely stating his conclusion that this brandy was not in interstate or foreign commerce.

Mr. Townsend: May I ask the witness a few questions?

Mr. Scoll: How can it be binding upon us in this inquiry?

Mr. Townsend: Mr. Examiner, may I ask a few questions?

Mr. Scoll: Why don't you wait until I get through?

Mr. Townsend: Because I don't want to go into all this and clutter up the record with something that obviously is not within the jurisdiction of the Maritime Commission.

Examiner Basham: The objection is overruled.

Mr. Scoll: I will put the question a little differently.

By Mr. Scoll:

Q. This lease is for a term, is it?

A. Yes; I don't recall the exact length. I think it is probably ten years or something of that sort. The people

were going to store their brandy at Lodi, but we had some vacant space there and we rented it to them.

[fol. 655] Q. The rental is payable on a monthly basis?

A. Yes.

Q. Do you have any other industrial users?

A. No.

Q. To whom you make leases?

A. No.

Q. There is no other processing performed in these places, such as labeling or assembling of goods and so on?

A. Oh, yes. You see, we put up these structures to make available to canners and producers who otherwise would store their goods in the country at various points where the canneries are, and they move the unlabeled canned goods into this storage and later, I presume, they label it. We do not do any of that operation.

Q. I understand that. And those users hold their leases?

A. Yes.

Q. For terms?

A. Yes.

Q. And payable monthly?

A. Yes.

Q. They pay a monthly rent?

A. Yes.

Q. Is the rental they pay on file as a warehouse tariff? Is it published as a warehouse tariff?

A. No sir.

[fol. 656] Q. Does it ever happen occasionally that these brick warehouses that you speak of have ever been used to hold cargo or freight that is stored under a wharf demurrage rate?

A. Yes. When we don't have room in the wharf occasionally, we use one of these units. In that case, why, the freight is placed there for our convenience and takes the regular wharf demurrage schedule of charges.

Q. How does the wharf demurrage scale of charges compare with the rentals in amount, let us say, per month?

A. Why, you mean higher or lower?

Q. Higher or lower.

A. I would say they are higher.

Q. Are they much higher?

A. No, not very much higher probably.

Mr. Townsend: Pardon me. May it be understood, Mr. Examiner, that my objection goes to this whole line of ques-

tioning with respect to any of the rentals of this type of goods under discussion?

Examiner Basham: Yes sir.

By Mr. Scoll:

Q. What is the wharf demurrage rate under which such cargo would be stored?

A. That depends on the commodity.

Q. Let us say canned goods.

A. Canned goods? A cent and a quarter per day; a cent [fols. 657-662] and a quarter per ton per day.

Q. That would be roughly 37½ cents per ton per month?

A. Yes.

Q. Is your leasehold rental equivalent to—what is that equivalent to per ton per month? Is it purely on a space basis?

A. It is purely on a space basis and we don't pay any attention as to how the space is utilized. In other words, we lease it just as any property owner in town would lease a building.

[fols. 663-671] Cross-examination.

[fol. 672] By Mr. Geary:

A. Colonel Allin, in regard to the questions that were asked you by Mr. Graham concerning the brandy in that warehouse, the rental charge that you make to the Haslett Warehouse and the warehousing charge which is made by the Haslett Warehouse is such that there is a wide disparity between those two charges, is there not?

A. I don't know. I assume they make a profit. They usually do.

Q. Is the Port of Stockton fundamentally engaged in the operation of the port facilities or is it engaged in the operation of a warehouseman?

A. We do not like to go into warehousing. We are engaged primarily in operating a port.

Q. And in the operation of the Port, the operation contemplates facilities which can be used for the storage of merchandise and the expedition of that merchandise across the dock, either to or from vessels; is that not correct?

A. Yes sir.

Q. Can you give a comparable figure in response to the questions that were asked of you by Mr. Seoll, concerning [fol. 673] the average rate of discharge and loading of cargo in 1934 by stevedores at Stockton, in comparison with the rate of loading and discharging at Stockton, let us say, today?

A. No, I could not. But I understand that the various Awards which have been made have increased the expense to the ships but I could not give you those figures. I don't have them.

Q. But you do know that there has been a very definite minimizing of the volume of cargo that is moving in or out of vessels since 1934, insofar as the average rate per hour is concerned?

A. Well, I understand that there has been a slow-down in a great many places, but, so far as I know, the stevedoring contractors or those engaged in the stevedoring business at Stockton have very definitely not complained of any slow-down at Stockton.

Q. Is that true in comparing 1934 with 1939?

A. Our stevedores were rather green in 1934. I don't know that they had reached any stable condition at that time.

Q. Let me take 1935. You were operating in 1935, were you not?

A. Yes sir.

Q. Would you say that the rate of loading and discharging cargo today is the same as it was in 1935?

A. Well, I have endeavored, Mr. Geary, to say that, so far as I know, the efficiency of the stevedores is fairly good [fol. 674] at Stockton. I don't know that there has been any complaint at all on the stevedoring end.

Q. I am not asking you that. I am asking you whether or not there has been any decrease in the efficiency of the stevedores in 1935 vs. 1939.

A. I think that they are just as good today as they were in 1935.

Q. Have you kept any record of that to determine that with any degree of accuracy, Mr. Allin?

A. I have records recently, but I have no records of 1935 and I am going entirely on the comments of those who employ stevedores.

Q. Without any check at all on your part?

A. Without any check.

Q. Does the Port of Stockton employ any stevedores directly?

A. We do.

Q. Aside from the contracting stevedores?

A. We do.

Q. And have you any experience with respect to the stevedores which the Port of Stockton employs concerning the volume of cargo in and out, 1935 in comparison with 1939?

A. We found that their efficiency is comparably good today as compared with then, but, of course, their wages are not.

Q. Do you agree with the statement that was made by Mr. [fol. 675] Jones today to the effect that there is no obligation upon the public operator of a terminal to make any profit out of that operation?

A. I am afraid I would have to consider what was meant by "profit," before I could answer that question.

Q. I mean a net left over after your expenses have been deducted from your gross operating revenue.

Examiner Basham: Mr. Geary, I believe that is just a matter of opinion or argument.

Mr. Kilkenny: It may be a matter of law, too.

Mr. Geary: Here is a situation where, as I understand it, we are discussing certain charges and whether these charges are compensatory to the Port of Stockton or not.

Examiner Basham: Mr. Geary, it is not a matter that is susceptible of proof. We might have his opinion, but what would it be worth in this investigation?

Mr. Geary: It would be worth this much, it seems to me, Mr. Examiner, because you are considering, and what the Maritime Commission, as I understand in this proceeding is endeavoring to take jurisdiction over, is not only the private operator, but is, likewise, endeavoring to take jurisdiction over the public operator, providing that the jurisdiction of the Maritime Commission can be found within the purview of the Shipping Act. If that is the fact, and the Maritime Commission is faced with the statement of a public body to the effect that it need not make a profit, whereas [fol. 676] obviously a private operation must make a profit in order to continue to exist, I think that the Maritime Commission is entitled to that expression from the public body.

Mr. Kilkenny: Mr. Examiner, I submit that is largely a question of law; the law under which the Port is organized

and operated as to what charges are made and what the basis of the charge is. It is a conclusion.

Examiner Basham: I think the question is irrelevant, and I will rule that the witness need not answer the question.

By Mr. Geary:

Q. With regard to the wharf demurrage of one and a quarter cents per ton per day, I want you to assume with me, if you will, Colonel Allin, a shipment of canned goods inbound. When that shipment arrives at the Port of Stockton it is taken from the ship's hold and dropped onto the dock at the Port of Stockton.

A. Yes.

Q. And if the owner of the cargo requests it, that cargo will be moved perhaps from the floor of the dock into perhaps one of these warehouses. Is that correct?

A. Yes sir.

Q. And when the cargo of canned goods is put into the warehouse it still continues to take the charge of a cent [fol. 677] and a quarter per ton per day, is that correct?

A. That's correct. The only trouble is that the shipper would never ask us to put it in the warehouse because he would rather leave it on the wharf and not pay for the transfer.

Q. When it is moved under those circumstances, when it is moved from the wharf into the warehouse, what is the cost of the transfer?

A. Depending on the item.

Q. On canned goods?

A. 40 cents a ton.

Q. Suppose the situation is one where the cargo of canned goods is moved off the dock or off the transit shed because the Port of Stockton wants to move it off and put it into the warehouse, let us say, to relieve congestion on the dock; what happens then? Does the shipper pay 40 cents a ton for that movement?

A. He certainly does. That is the only way it would get moved back there. We would simply insist on moving it.

Q. And would charge him for that?

A. Yes.

Q. What service is performed for that 40 cents a ton?

A. Simply to transfer it into the warehouse.

Q. What about piling?

[fol. 678] A. It would naturally be piled.

Q. Would it be high piled?

A. Probably not; depending on the amount of congestion pending at the time.

Q. If it were high piled would there be any further charge beyond the 40 cents?

A. We have a charge in our tariff for high piling. I presume that if it were high piled under the conditions as you outlined them, it would be for our account, though, because we would have space to accom-odate it otherwise.

Q. You have had circumstances of that kind arising?

A. No, I don't think so. We have practically no inbound business, as I mentioned a minute ago. It is all outbound.

Q. If there were a situation of that character the expense of high piling would be for your account?

A. Possibly.

Q. Under the conditions where it was being moved off the transit shed because of the possibility of congestion?

A. Probably so.

Q. And have you ever checked to determine whether the cost of 40 cents per ton for moving that cargo from the transit shed into the warehouse is compensatory to the Port of Stockton?

A. Yes, we have.

Q. And what have you found?

[fol. 679] A. We found it is.

Q. That it is compensatory?

A. Yes sir.

Q. Have you made any checks of that recently to find out if that is compensatory today?

A. This is all within the last six months, as I recall it.

Q. And that has proven that at 40 cents a ton it is compensatory?

A. Yes.

Q. Do you feel that the charge of one and a quarter cents per ton a day is compensatory?

A. Well, now, it depends on what you mean by "compensatory." Mr. Geary, it is my feeling that the cost to ourselves—for example, the operator—of wharf demurrage is the additional costs of cluttering up the dock involved and handling other freight. It has no relationship to the cost of the square foot on the wharf. When you say "compensatory," I say I do not think it is compensatory because

wharf demurrage makes other operations on the wharf more costly.

Q. Because you have to duck around the cargo that is then on the wharf?

A. Yes sir.

Q. And that you do not think then, that the cent and a quarter per ton per day is compensatory?

A. I do not. But I base that not on the cost of the struc-
[fols. 680-689] ture but on the cost of the costly operation, which is entailed.

Q. If that cargo is taken into the warehouse by the Port of Stockton to relieve congestion on the transit shed, is there any charge then made by the Port of Stockton to the receiver of that cargo for, let us say, unpiling it, or for delivering it?

A. No sir.

Q. The total charge of 40 cents per ton takes care of the whole operation?

A. Yes. And, of course, that includes the responsibility for checking it out—checking it when it goes out.

Q. Taking this situation with respect to the leasing of your warehouses, is the rental charge which is made by the Port of Stockton a rental charge which is determined by the space which is consumed, or is it determined in any respect by the commodity which may be used to occupy that space?

A. I would say by the space which is used. In other words, we have an investment there and we feel that there should be a return earned on that investment; in other words, amortization on bonds, and so forth.

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[fols. 690-700] PROCEEDINGS

Examiner Basham: Are you ready?

Mr. Scoll: Colonel Allin, please?

B. C. ALLIN was thereupon called as a witness for the Commission and, having been first duly sworn, testified further as follows:

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[fols. 701-712] Cross-examination.

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[fol. 713] By Mr. Geary:

Q. Reverting to the canned goods again, outbound, how many stories are there to these warehouses that you lease?

A. Single story.

Q. Single story?

A. Yes.

Q. Have you ever observed a situation where, during the season when one of these warehouses was under lease, it was not used to its maximum capacity by the lessee?

A. Oh, yes.

Q. Now, to what extent?

A. Well, I couldn't say. I just know that there have been cases where part of the space was idle.

Q. What proportion of the space have you observed to be idle and for what length of time during the season?

A. Oh, I really could not say. I think that fluctuates very highly.

Q. It would be idle toward the end of the season rather than toward the middle of the season?

A. I would think so.

Q. But during the middle of the season it is used to its maximum capacity?

A. I would say reasonably so.

Q. Is the scale of wages which are paid to your warehouse employees the same as the scale of wages paid to [fol. 714] your dock employees?

A. You say our warehouse employees?

Q. Yes.

Q. Just whom do you mean by our warehouse employees?

Q. Well, the men, for instance, who pile or unpile merchandise in the warehouse?

A. If they are cannery employees, I wouldn't know what the scale is, off hand.

Q. If they are Port of Stockton employees?

A. Port of Stockton employees? They get the regular scale that applies all around San Francisco Bay.

Q. That is the scale of wages for stevedores or the scale of wages for warehouse employees?

A. I take it back. I don't mean all around San Francisco Bay; I believe locally there is a different scale at Stockton among the warehouse employees from what it may be here.

Q. Is that scale of wages fixed under any agreement with any association?

A. It is fixed so far as private operators are concerned, but the Port of Stockton does not make agreements with labor.

Q. And does the Port of Stockton accept that labor scale in the payment of wages to its employees in the warehouse?

A. The Port of Stockton has a scale which takes into consideration what is paid locally, and I cannot say that it had definitely accepted the local scale.

[fols. 715-727] Q. Does it pay more or less, Colonel Allin?

A. I would say it pays about the same.

Q. About the same?

A. Yes. In other words, my understanding is that the warehouse scale has different grades according to the duties of the men; in other words, we have mill feed plants in Stockton and the various men have different scales of wages. I think our men are paid comparably about the same as the same grade of private warehouse workers.

* * * * * * *

[fol. 728] Recross-examination.

By Mr. Vaughan:

Q. Colonel Allin, when you said that the Port of Stockton did not issue any warehouse receipts, did you have reference to property that was being stored in these so-called private warehouses?

A. I believe that question was on those leased areas, yes.

Q. Yes. Now, are warehouse receipts—is any kind of a receipt issued by the Port of Stockton in instances where [fol. 729] property is stored under the wharf demurrage rates?

A. Yes, sir, it is.

Q. And to your knowledge, are those receipts ever used as collateral for bank loans?

A. I believe they are.

Q. You testified Friday that in your opinion the wharf demurrage rates were not compensatory because of the fact that the property under wharf demurrage so congested the docks that it was necessary for you to skirt around them and that cost of operation was expensive to the Port, and you believed that for that reason they were not compensatory, is that true?

A. I think that is the theory on which they should be based.

Q. Have you ever made a study to determine whether or not the revenue received under wharf demurrage rates is sufficient to cover, first, the amount of labor required to handle and pile goods on wharf demurrage, and, second, to compensate the Port of Stockton for the space required to store those goods on wharf demurrage rates on a pro rata space basis?

A. I have made a rough estimate on the cost of the wharf structure, and it is my opinion that the present wharf demurrage rate is compensatory purely on a basis of the area of the building that it occupies, but that does not take into consideration the factor of increased operating costs which storage in the transit area involves, and that is a factor which is very difficult to determine.

[fol. 730] Q. Well, do you believe, taking into account the labor required, that the revenue received under wharf demurrage rates covers your costs?

A. Well, I don't know what you mean by the labor required.

Q. For piling and handling and checking and any other labor performed in connection with wharf demurrage?

A. Of course, the checking—there is no additional checking unless the freight is moved, but I do not think the present wharf demurrage rates are compensatory unless the wharf is idle and wouldn't be used for anything else anyway; and that, of course, is not a normal operation for a wharf. A wharf should be used for free flowing merchandise.

Q. Are you referring in your answer to outbound goods or merchandise inbound?

A. I am referring entirely to outbound because that is the major portion of our business.

Mr. Vaughan: Thank you.

By Mr. Graham:

Q. Colonel, if the wharf demurrage rates were raised and in fact became a penalty rate, which you advocate, is it not a fact that you would have to establish a new set of rates for what I will call your free storage of goods which you have not now got, or would you leave them at the present so-called wharf demurrage rates?

A. I think—I don't know that I understand your ques-
[fol. 731] tion, Mr. Graham.

Q. As I understand you, you advocate that demurrage rates should be on a penalty basis?

A. Yes.

Q. That would require them to be higher than they now are?

A. Yes, sir.

Q. Now, if that were a fact, would you continue to store your goods in the unleased warehouses on the wharf demurrage at this high penalty rate?

A. I imagine we would, unless it were prohibitive, in which case we might have to consider adopting some reasonable storage which would be separate again from any other system of charges that we now have.

Q. I think on Friday you testified that recently you had changed your tariff to provide for a waiver of free time, or an extension of free time, where a vessel was delayed? When was that done, do you know?

A. Excuse me; we didn't change our tariff.

Q. I guess it was my misunderstanding, that is item 370?

A. The tariff states that the Port may grant an extension of free time equivalent to the delay of a water carrier due to weather, accidents, breakdowns, or other emergencies, in those instances where shipments have arrived at the port consigned to a vessel so delayed. What I said was that we were using this wording "or other emergency" now to
[fol. 732] include the mere being late of a vessel, which we understand to be the prevailing policy in San Francisco Bay.

Q. So what the rule really comes down to is a rule that if the vessel is late, the Port of Stockton may grant an extension?

A. Yes, sir. I think it should be made definite that they will, with some limit to it, say, five days, for example.

Q. In other words, the tariff now says you may optionally, and you believe that it should be obligatory but with a fixed time of extension?

A. Yes, sir.

Q. How long has this rule been in effect, do you know, that you might grant an extension?

A. Oh, for a very considerable length of time. I don't recall when it was put in; a number of years, probably.

Q. Prior to that rule, and when you didn't have any option to grant an extension, did you charge demurrage

rates to either the cargo or the shipment when the ship was late?

A. We did.

Q. Whom did you charge it to, do you know?

A. We charged it to the shipper.

Q. The cargo?

A. Yes, sir.

Mr. Graham: I believe that is all.

Mr. Vaughan: May I ask another question?

[fols. 733-739] By Mr. Vaughan:

Q. Colonel Allin, do I understand that the wharf demurrage rates assessed by the Port of Stockton are lower than the warehouse rates currently charged by public warehouses in the Port District?

A. I believe they are lower.

Q. And are the wharf demurrage rates lower because of the desire of the Port of Stockton to compete with those public warehousemen in Stockton, or because of the fact that the wharf demurrage rates of the San Francisco Bay Terminals are on the same level as the wharf demurrage rates at the Port of Stockton?

A. It is entirely the competition of the terminals in the San Francisco Bay.

* * * * * * *

[fol. 740] B. C. Allin thereupon resumed *and* stand and having been previously duly sworn, testified further as follows:

Direct examination.

By Mr. Differling:

Q. Colonel Allin, do I understand correctly that this Public Warehouse Tariff which you publish has the charges for your wharf demurrage rates?

A. We use the wharf demurrage schedule.

Q. What is the reason for publishing two separate tariffs, then, where the charges are identical?

A. No, I say we use the wharf demurrage tariff for goods which are on wharf demurrage either in the warehouses or on the wharf. We have no other goods in storage.

Q. Well, do you publish any other tariff or do you have

in your files any scale for charges other than those shown in your wharf demurrage tariff, which is part of the record here, exhibit No. 69?

A. That is the only schedule of charges which we have at the present time.

Q. You made reference to the fact that you knew what your floor space costs were for wharf demurrage; would you mind stating what that cost is per square foot?

Mr. Townsend: Mr. Examiner, I object to the question as incompetent, irrelevant, and immaterial. I think that the matter of costs of wharf demurrage space or anything relating to the costs has no bearing in this proceeding be-
[fol. 741] cause this Commission has no jurisdiction over the level of the wharf demurrage charges.

Examiner Basham: Objection overruled.

A. Mr. Differding, in answering your question it will be necessary for me to read this into the record, if it is satisfactory (indicating).

Mr. Scoll: May I see it?

By Mr. Differding:

Q. Can you just tell me what that cost is per square foot?

A. Yes.

Q. In order to answer the previous question, you must have had that figure, and that is all I desire.

A. $4.87 per square foot.

Mr. Grahaur: What is that, the warehouse space?

The Witness: Transit shed floor area.

I submit, Mr. Examiner, that that is not entirely intelligible without being explained.

Examiner Basham: You may explain the answer.

By Mr. Differding:

Q. It is $4.87 per square foot and that is on a yearly basis?

A. It is on a square foot basis.

Mr. Townsend: Colonel Allin, the Examiner said you could go ahead and explain it.

By Mr. Differding:

[fol. 742] Q. Will you go ahead and explain the answer?

A. In order to arrive at the cost of the structure, we took four wharves, five, six, seven, and eight, and we found

that the cost of construction, plus the cost of dredging, plus the cost of the land, gave those facilities a cost of $742,792. Those are covered wharves, and it is my feeling that the wharf is no good without the transit shed, and the transit shed is no good without the wharf, and that the two cannot be separated when it comes to cost. Therefore, they must be lumped, and I have lumped the entire cost of those facilities. I have then taken the total area of the transit shed and removed from it the area for central driveway, ramps, elevators, and so forth, and arrived at a total square foot area left available of 152,518 square feet which, divided into the previous cost, gives a cost per square foot of the facility of $4.87. That has nothing to do with any period of time. That is the cost of the structure.

Q. Now, do you agree that goods on wharf demurrage require actually more space than that covered by the goods themselves, in order that they may be handled?

A. I do feel that an estimate of 60 per cent of this available space is fair to consider as the space which would reasonably be used for the actual storage of goods, the piling of the goods.

[fol. 743] Q. And that would mean that your figure would have to be extended by that percentage?

A. To the extent of $8.10 per square foot.

Q. $8.10?

A. Yes.

Q. And your theory of developing costs for wharf demurrage, then, would hold true in your other charges, would it not? And if you are going to use the blanket overall cost of dredging, aprons, and fenders, as well as structures, for arriving at your wharf demurrage cost, you would similarly use that breakdown for your other services?

A. I don't know what other services you mean.

Q. You have dockage and you have a receiving and a delivery charge, which is comparable to what they call a service charge down here, and you also have tolls.

A. No, I don't think—I see what you mean. Yes, I would lump those figures all together.

Q. Yes?

A. I don't believe in too highly analytically separating those factors.

Q. Do you believe that the users of your different services are compensating you for them?

A. I do.

Q. And do you believe that the closer that those costs for each service can be arrived at, that in turn the charges [fol. 744] should be predicated upon those divisions of costs?

A. Yes, sir.

Q. All right. Now, you stated that your present wharf demurrage rates are not on a penalty basis because of the competition on San Francisco Bay, as I understand it?

A. Yes.

Q. Now, assuming that the competition be eliminated, what, based upon your judgment and experience in the terminal business, would your prescribe as a penalty wharf demurrage rate to effectuate the purposes that you hope to obtain?

A. Oh, I think that that should be increased probably three times.

Q. In other words, on merchandise N. O. S., your storage rate of 2 cents per ton per day you would increase to 6 cents per ton per day?

A. Well, say, five cents.

Q. And you would leave it on a per day basis?

A. Yes, but there would be a certain ceiling. We have never considered the detail of the schedule as carried out for any length of time. I think that would be a little too burdensome if there were not some——

Q. That comes to the second point that you apparently had in mind. Then, after you have established this penalty wharf demurrage rate of 5 cents per ton per day on merchandise N. O. S., what would be your judgment as to a [fols. 745-758] proper set-up of a storage basis of charges for a period of time, a month, two months, six months, or a full year?

A. I haven't really given, Mr. Differding, any consideration to that, because I don't feel that storage should be encouraged on a wharf unless the wharf is otherwise going to be idle. In other words, I feel that a wharf should be kept for the free flow of transit business.

Q. Yes, I appreciate that, Colonel, but you also mentioned in answer to counsel's question across the table that there should be prepared a second basis of charges to provide a service to those persons who desired storage. Now, what is your opinion on that?

A. That was in the warehouse. I said possibly we might have to devise such a schedule of charges, but we haven't done that to date.

. . . . . .

[fol. 759] Q. On item 385 you have various bases of charges, in other words, you have the per ton per day basis, you have a monthly basis, and you have, like the grain N. O. S., the ten day to thirty day basis. Do you have any particular preference for one basis or another in assessing your wharf demurrage charges?

A. Yes, personally I would like the simplest possible basis.

Q. And what do you consider the simplest possible basis? What is that?

A. I say just one set charge per ton per day, but whether that could be achieved as the ultimate I doubt, because the various trades and commodities have sometimes different conditions that could not be overcome.

Q. It is true, however, Colonel Allin, that about 98 per cent of all the specific commodity rates listed here are on a per ton per day basis?

A. That is true.

[fol. 760] Q. So you are satisfied with the basis used at the present time?

A. I don't know, Mr. Differding. I think this basis has just grown like Topsy over a period of a good many years, and possibly some came to be used without rhyme or reason and they have existed for years and nobody disturbed them. I question whether, if you analyzed them in detail, you could find the complete justification for the differentiation.

Q. You say you could or could not?

A. I doubt if you could.

Q. In other words, then, you would agree that these rates have been more or less plucked out of the air and put in the tariff and there they are?

A. That is usually the way they are.

Q. Colonel Allin, have you made any study as to the matter of overhead costs and clerking costs that are properly to be allocated against wharf demurrage maintenance, similar to your floor space costs?

A. Yes. I will have to explain that, however, in the same manner that I explained the previous figure.

Q. All right, will you let me have the figure first and then explain it?

A. It is not quite as simple as that, Mr. Differding. Taking my revenues for certain sheds of $115,500, and expense, overhead, and depreciation, of $47,500, I find that those [fols. 761-800] expenses equal about 41 per cent of the reve-

nues, and if, for example, I were to have to earn a return of 5 per cent on the $8.10 per square foot cost of my shed, that would mean about 40½ cents per year, and if I added 41 per cent to that in order to earn that 5 per cent, I would get an earning of 57.1 cents per year that I would have to earn per square foot to get the 5 per cent return. If we just use round figures of 60 cents, that would equal 5 cents per square foot per month. On canned goods, if they are stored 270 pounds to the square foot, or 7.4 square feet to the ton that would equal 37 cents per ton per month, or roughly 1¼ cents per ton per day, which is our present demurrage rate.

Q. And that space of 7.4 square feet is without high piling, is it not?

A. Yes, sir.

Q. Have you found it necessary in the efficient operation of your terminals to perform much high piling and breaking down of cargoes in order to conserve space for goods that are on the wharf demurrage?

A. Very seldom. We have, however, encountered that a few times in a congested period.

Q. And what has been the disposition of the cost? Have you absorbed that in overhead expense?

A. In those cases we have absorbed it.

. . . . . .

[fol. 801] Redirect examination.

By Mr. Differding:

Q. I have a couple more questions, Colonel. In your reference to meeting competition by extending your free time to include the delays of vessels in the ordinary course of business, you mentioned meeting San Francisco Bay competition. Did you include specifically any San Francisco terminal?

A. Not necessarily, no, sir. It was just generally competitive conditions around the Bay.

[fol. 802] Q. You know this, do you not, that the tariff of the Board of State Harbor Commissioners in San Francisco requires assessment of wharf demurrage on the same basis whenever the free time is exceeded by a vessel?

A. It might read that way, yes.

Q. Isn't that your understanding?

A. That it reads that way? Yes, sir.

Q. Do you have any understanding that those charges are not assessed and collected?

A. Yes, sir.

Q. What is the basis of that?

A. It is largely hearsay.

Q. Have you ever made any effort with these other terminal operators in San Francisco Bay to get together on this matter of free time?

A. No, we have not got together on it. I do feel that it will be a matter of study.

Q. Now, your allowance of ten days free time on inbound and outbound commodities in all trades, was that made to meet the East Bay Competition?

A. Yes, sir.

Q. And not San Francisco?

A. East Bay.

Q. Are your non-free time periods allowed by the East Bay Terminals and yourself a proper measure of the free time, or is that in effect at the San Francisco Bay?

[fols. 803-824] A. I would say that ours is better.

Q. And why is your basis any different from the San Francisco Terminals?

A. Well, we don't have a lot of less than carload freight. Ours is very largely large lots, and it seems to me that ten days free time is desirable.

Q. That is all you have to offer on that?

A. Yes.

Mr. Differding: I think that is all I have, Colonel Allin.

* * * * * * *

[fol. 825] M. D. McCARL was thereupon recalled as a witness for the Commission, and, having been previously duly sworn, testified further as follows:

Direct examination.

By Mr. Scoll:

Q. Mr. McCarl, you are familiar, are you not, with the final report of the California Railroad Commission in case 4090, which has been introduced in this record as exhibit 61?

A. I am. I read it some time ago.

[fol. 826] Q. I would like to read to you a statement from Chapter 8 and ask you a question about it. On page 96 of

this report, following the statement of the formula whereby the area of the terminal chargeable to demurrage is computed, appears this statement:

> "Thus, out of every 100 square feet chargeable to demurrage, 30 square feet of aisles and 10.5 square feet of waste areas are non-revenue producing, leaving 59.5 square feet as revenue producing."

Do you agree with that conclusion, that approximately 59.5 square feet of terminal space chargeable to demurrage is actually revenue producing?

Mr. Jones: Just a moment, please. Mr. Examiner, I am objecting again on the matter of jurisdiction. The Board of Port Commissioners feels that the Maritime Commission has no jurisdiction over the level of the rates of warehouse storage, and hence I am going to instruct Mr. McCarl or any other witness from the Port Commission to refuse to answer any questions based upon the level of rates or any formula or basis for fixing them. Any question of practices or what rates are applied, or any such thing, is perfectly all right, but in so far as the basis is concerned—in other words, frankly, I am inviting, with all due respect to the Commission, content proceedings, in order that we may determine once and for all whether or not the Board is subject to the Maritime Commission on this one point. So, con- [fol. 827] sequently, I instruct Mr. McCarl to refuse to answer that question.

Mr. Scoll: May we go off the record a minute, Mr. Examiner?

Examiner Basham: Off the record.

(Discussion off the record.)

Examiner Basham: On the record. Do you desire to ask the witness any further questions about port demurrage?

Mr. Scoll: We will see how far we can get.

By Mr. Scoll:

Q. Are your rates and practices regulated by the California Railroad Commission?

A. No, sir.

Q. Have your operating costs increased since 1936?

Mr. Jones: I instruct him to refuse to answer—

By Mr. Scoll:

Q. How is the competition among the terminals——

Examiner Basham: Let me say this; I think the witness should answer. Go ahead.

Mr. Jones: I will instruct you, Mr. McCarl, not to.

By Mr. Scoll:

Q. How is competition—in your opinion, how has competition among the terminals in San Francisco Bay Area affected the wharf demurrage rate?

[fol. 828] A. I think it has been very largely responsible for the *the* naming of the various rates for the Terminal Warehouse.

Q. What do you mean by that?

A. I think in the past it has been based almost entirely on the matter of competition.

Q. And for that reason will you say that it was unreasonably low?

Mr. Jones: I instruct you to refuse to answer.

Examiner Basham: The witness should answer.

Mr. Jones: My instruction stands.

By Mr. Scoll:

Q. You heard Mr. Allin testify, I think, concerning what he thought a reasonable and proper wharf demurrage was, did you not?

A. Yes, I did.

Q. I believe he stated that but for various competitor factors that have determined the rate, that a proper rate would be in the neighborhood of 5 cents per day.

Mr. Jones: The same instruction.

Mr. Scoll: Let me finish my question, please.

By Mr. Scoll:

Q. Do you agree with that statement?

Mr. Jones: The same instruction.

Examiner Basham: Let me make a general statement, that in the Examiner's opinion the questions along this line [fol. 829] should be answered by the witness.

Mr. Jones: Mr. Examiner, I think that these go to the basis of the rate.

Examiner Basham: That is all right, I don't think we need to argue it. I just want the record to show that in *my opinion they should be answered*, and I understand you will instruct him not to answer when you feel he should not.

By Mr. Scoll:

Q. Now, this competition which has affected the level of rates, about which you are permitted to speak, has also in some manner determined the application of free time and enforcement of the free time provisions published by the tariffs?

A. I think the free time has been determined in approximately the same way, a matter of competition.

Q. Do you know whether it has been the practice among the terminals in the San Francisco Bay Region to extend free time beyond the tariff provisions in order to favor shippers?

A. I don't know definitely of any such instances. We have heard that certain parties have, either knowingly or otherwise, not always assessed demurrage charges which might have accrued.

Q. Does the Port of Oakland operate public warehouse facilities on the terminal?

A. Not warehouse facilities; we have one facility known as Terminal Building C in the rear of the transit sheds of the Outer Harbor Terminal.

[fol. 830] Q. And is that Terminal Building C reserved for warehouse storage?

A. It is used for the handling of overflow cargo, or cargo that we believe will remain in storage for a considerable period of time.

Q. How is it located with respect to the transit shed which it adjoins?

A. It is immediately in the rear of the transit sheds and across the street, probably 200 feet distant from the transit shed at the nearest point.

Q. What kind of a structure is it, a one or two story?

A. Two story concrete.

Q. And used entirely for storage, is it?

A. For cargo remaining longer than the free time period. Outside of pineapple, which comes into the terminal by water, it is used entirely for outbound water moving cargo.

Q. Let me see if I understand you. You say it is used entirely for outbound cargo?

A. Yes, outbound water movement.

Q. And no inbound movement?

A. Not with the exception of pineapple.

Q. What rates apply to goods that are stored in terminal building C?

A. Either the rates that apply in the transit shed, or in a few cases, a square foot basis.

[fol. 831] Q. And the rates referred to in the transit shed are the wharf demurrage rates?

A. Yes, we call them storage rather than demurrage. We have a little different view of goods remaining in storage in the transit sheds, I believe, from the others.

Q. Will you explain that?

A. I think possibly the quickest way would be to read a short statement which was prepared by Mr. Hegardt, former Port Manager, and myself, and presented to the Railroad Commission.

Q. Just a moment. Would you mind if we defer the reading of the statement until later, and you just follow me on the questions for the time being, because you may want to read something in there that your attorney would object to.

Mr. Jones: That is what I was afraid of.

By Mr. Scoll:

Q. Let me rephrase my question: You apply a wharf demurrage rate in the transit shed, do you not?

A. I say, we call it wharf storage rather than demurrage.

Q. In the tariff it is called wharf storage?

A. Yes.

Q. Now, is that the only storage rate that applies in the transit sheds?

A. Yes.

Q. Now you have also, do you, a warehouse rate on a square foot basis?

[fol. 832] A. Yes, for limited use, I would say.

Q. Now, is that rate set forth in your terminal tariff?

A. It is.

Q. Do you have any other storage rates that apply either in the transit sheds or terminal Building C, or any other areas that are used or useful for storing property?

A. None whatever.

Q. So that you have only the two rates?

A. That is right.

Q. Now, does it happen that cargo or goods which are stored in Terminal Building C are sometimes stored there under the wharf storage rate?

A. Yes.

Q. Is that usual?

A. I would say in most cases. However, so far as volume is concerned, I think the greater volume would be on the square foot basis.

Q. Do you issue receipts on the goods that are stored on the square foot basis?

A. No.

Q. Do you publish a warehouse tariff?

A. No.

Q. Do you permit on the transit spaces of the pier sheds, any storage other than what you refer to as wharf storage, and which we have been referring to hitherto as wharf demurrage?

[fol. 833] A. No, we do not.

Q. Do you make that a strict rule?

A. Either transit cargo or storage cargo.

Q. Do you have any cargo stored on any of the transit space on a square foot basis?

A. No, we do not.

Q. Now, do you have any storage accounts or any other accounts on which to store goods at some other rate than the square foot rate or the wharf storage rate?

A. We have a few leases. Those are not in the transit sheds, however.

Q. What buildings do you lease?

A. Terminal Buildings A and B at the Outer Harbor Terminal, and then there is a facility out in East Oakland that is leased, formerly occupied by the Body Canning Company.

Q. How do you designate that building, that leased one, that was formerly leased to Body Canning Company? Is that East Oakland?

A. That is East Oakland, approximately 19th Avenue and Livingston Streets.

Q. So that the only three buildings or areas which you lease are Terminal Buildings A and B, and the 19th Avenue Building, is that correct?

A. There are some other leases. There is one to the Western Vegetable Oil in the Outer Harbor area, and, of course, we have one to Albers Brothers Milling.

[fol. 834] Examiner Basham: Off the record.

(There was a discussion off the record.)

By Mr. Scoll:

Q. In view of the fact that there is a list of these leases, perhaps we can go on to another matter now and come back to that later. Do any of these lessees, to your knowledge, operate the premises as public utility wharfingers or warehousemen?

A. We have one that I intended to mention when we had the break there, the one in Terminal Building C to the Oakland Bean Cleaning Company, I believe they call themselves, who are a public utility in so far as the cleaning and storing of beans is concerned.

Q. And do you know what storage rates apply to their business?

A. I understand they are the same rates that apply at the so-called up-town warehouses.

Q. Do you have any agreement or understanding with them with respect to what the rates shall be?

A. Their rates are on file with the California Railroad Commission. We have no understanding otherwise.

Q. So that you do not exercise any control over those rates through the terms of the lease that you have with them?

A. We don't have a lease. It is just a space rental arrangement under the rates provided for in the tariff. I re-[fol. 835] ferred to it as a lease, but it is really a space rental arrangement, a month to month basis.

Q. How is the rental paid, on a square foot basis?

A. A square foot basis, yes.

Mr. Scoll: Those are all the questions I have for the moment.

Mr. Differding: I have a few questions, Mr. Examiner.

By Mr. Differding:

Q. Mr. McCarl, I show you exhibit 71 in this proceeding, which is a copy of your present tariff, and show you First Revised Page 2, naming rates, charges, rules and regula-

tions, under which appears in parentheses "(Subject to change without notice)". What is your interpretation of those particular words in the application of that tariff?

A. The rates are established by ordinance, and if, for any reason a party does not receive a copy of the tariff or a correction to the tariff, nevertheless the rates apply and they are subjected to those rates, any users of the facility.

Q. It is a fact, is it not, that there are hundreds of users of your facility who do not have a copy of the tariff?

A. That is right. We do not guarantee to give everybody a copy of the tariff but they are subject to the tariff even [fol. 836] though they do not receive a copy of it or a copy of the corrections.

Q. Taking out at random Second Revised Page 24-A of the same tariff, down at the bottom the words appear as follows: "Adopted March 8, 1937. Effective March 8, 1937." And there are numerous other pages showing the adoption and the effective date to be the same in the tariff. The word "adopted" refers to the adoption of the tariff change by resolution of the Board of Harbor Commissioners of the City of Oakland?

A. By ordinance, rather than as a resolution.

Q. By ordinance? And what effort is made, if any, to notify the users of your facilities, be they the shipping public or the vessel operators, as to these proposed changes under such conditions where the change and the effective date are concurrent?

A. We endeavor to give the shipping public the same amount of notice as the private operators. The rates are in practically all cases agreed to with the private terminal operators, and due to the fact that they have to file their tariffs with the California Service Commission we wait until the effective date is determined, and then we present to the Commission in ordinance form corrections which will put the Port of Oakland on a parity with the private terminal operators. It requires two readings of the ordinance at the Board meeting before adoption. Occasionally, in order to make our effective date the same as the private [fol. 837] terminal operators, an item that may be more or less inconsequential, or might be a reduction rather than an increase, might be made effective the first reading. That is most unusual, but then the effective date will be the same.

In most cases the effective date is in advance of the adoption date.

Q. You have had no instances where you have adopted tariff changes and had a retroactive date on those changes?

A. I know of none.

Q. And you are also aware of the requirements of the United States Maritime Commission—rather, the old United States Shipping Board, in Docket 126, requiring the intercoastal lines to publish these various terminal charges in their respective tariffs?

A. I am.

Q. And where changes are made, have you always advised the Intercoastal carriers in sufficient time for them to meet the statutory requirements of tariff publication?

A. We have never had any trouble along that line. The only time the question was raised was recently in connection with an inquiry in the toll charge, and we took that up with the representatives of the intercoastal operators, and I believe we satisfied them in so far as the effective date was concerned. The private operators and ourslves had exactly the same problem.

[fol. 838] Q. Now, I assume that you have some member of the shipping public that uses your facilities exclusively, and he may be at some distant point; how is he advised of these changes that are adopted and made effective on the same day?

A. We have no exclusive users of our facilities, not being fortunate enough to have exclusive users.

Q. Are you sure that you are right in that respect?

A. Oh, yes, absolutely. However, we have never had any question raised, any objection raised, as to the effective date of a change in the tariff. I don't know of a single instance where there has been an objection.

Q. Is there any reason why you cannot publish your tariff changes a reasonable time, say 15 or 30 days in advance of their effective date, as your private competitors do?

A. Quite frequently the private operators request short notice applications of the railroad Commission and it is granted and we make our effective dates at the same time. Our Board meets on Monday, and in order to arrange the effective date very often it works out in a way of having to wait until we determine the effective date that the private operators' change will become effective, which makes rather short notice sometimes in so far as publication is concerned,

but that only applies in cases of reductions and we have never had any objection from the shippers.

Q. In the case of reductions on short notice I am sure you [fol. 839] ordinarily would have no objection, but let us take the usual changes, which are on 30 days notice by the private operators. The short notice requires special justification before the Railroad Commission and is not the usual thing that is done in making these tariff changes, is that so?

A. I think our time of notice coincides very closely with the time allowed by the private terminal operators filing their tariffs with the railroad commission.

Q. Your exhibit No. 71 does not indicate that, and I will again ask the question: Is it not a fact that there is nothing to prevent you from giving at least 15 or 30 days notice as required by the—thirty days notice, as required ordinarily of the private operators?

A. Nothing to prevent it, but sometimes in making these rates we do not wish to allow that much notice; usually it is in the public interest to have a shorter period of notice.

Q. Does that apply to increases in rates as well as decreases?

A. I don't know of any increases outside of what I mentioned, on which I think we gave ample notice.

Q. How much was that?

A. It was adopted by ordinance at the second reading on November 6, 1939, and was effective December 1, 1939.

Q. That is 24 days?

A. That is correct.

Q. Now, I show you Fourth Revised Page No. 7 of Exhibit No. 71, item 35-D, in which the exception is made as to [fol. 840] vessels delayed due to stress of weather, and so forth, excluding the other emergencies. You have heard the testimony of Colonel Allin in this proceeding?

A. I did.

Q. What has been the practice of the Port of Oakland as to waiving those charges where the vessel is delayed in handling its ordinary business?

A. I don't know as I would say that we waive the charges, but we interpret our tariff so as to permit an extension of the free time period, the same as the private terminal operators do in the East Bay.

Q. And while that item, which is exception No. 2, states that the Port Manager may extend the free time to such number of days as in his judgment is warranted and

equitable in each individual case, the fact is that in all instances he has extended the free time to cover such delays, isn't that true?

A. Where the vessels are delayed through no fault of the shippers and the shipper is not at fault in the delay of the vessel, the free time is extended in all cases. In other words, I might explain that we issue a sailing schedule setting for-- the date of sailing for various vessels, and inasmuch as we advise shippers in that manner as to the sailing dates in respect to vessels we feel that it is an obligation of the Port to protect them against any additional charges when vessels are delayed.

[fol. 841] Q. So much for the shippers. Now, what is your understanding, if the Port Manager did not exercise his judgment in extending that free time and the charge was to be collected, that is, for that amount of cargo which was delayed pending the delayed arrival of the vessel, would you assess it against the ship?

A. I think we would have a hard time collecting it against the ship unless it were shut-out cargo. We have never had any occasion to assess it against the ship.

Q. You have never had any shut-out cargo?

A. No.

Q. Now, there is also an extension of the free time period on cargo moving under through rates from the Hawaiian Islands to intercoastal or foreign destinations, being exception No. 1. Would you state the reasons for that extension of the free time in that instance?

A. We put that exception in our tariff to meet a competitive situation. However, I believe the wording of the exception was arrived at pretty mu-h through uniform action between the various terminal operators.

Q. What is the competition that you refer to?

A. It is my recollection that the Encinal Terminals—it was more of a problem with them some time ago than it was with ourselves.

[fol. 842] Q. Are we to understand then that they initiated it and you followed along, is that it?

A. That is my recollection.

Q. Mr. McCarl, when did the Board of Port Commissioners, as such, start in the active operation of the water front in Oakland Harbor?

A. About 1927, I believe.

Q. And what was the basis of wharf demurrage charges with your competitive terminals on the east side of the Bay at that time?

A. It is my recollection and my understanding that when we first commenced to discuss those matters with the private terminal operators the conditions in so far as assessing warehouse demurrage and storage charges were concerned, were very chaotic. There were no tariffs published by the private terminal operators, and I don't know as they even had rate sheets.

Q. And the fact was that that was prior to any requirement of the California Railroad Commission that terminal tariffs be filed, was it not?

A. That is correct.

Q. And how did the Port of Oakland try to meet that competition, that is, the basis of charge on a per day basis or on a period basis of some character; not specific rates, but what was the basis that you applied to your wharf de- [fol. 843] murrage cargo at that time?

A. The tariff in effect prior to the publication of this Port of Oakland Tariff No. 1 was a tariff which was published by the Department of Public Works, and the rate named for wharf demurrage or wharf storage, I forgot which it was called at that time, was 12½ cents per ton per week or fraction. Having had considerable experience in the assessment and collection of storage charges, and also in view of the competitive rates about the Bay district, we decided that a daily basis was preferable to a period basis. In my experience in the Pacific Northwest I know that when we used to assess charges on a period basis we had a great many complaints and a great deal of correspondence requesting the waiving of the period for one or two or three or four days, they claiming that we were not justified in assessing a charge for a long period of time where only a small portion of the time was actually used, and there was a tendency to waive the charges for those few days. That applied to the steamship operated terminals in the northwest and private terminals, as well as public terminals.

Q. Do you know how this 12½ cents per ton for seven days was arrived at by your predecessors, this Board of Public Works?

A. That was the rate in effect in San Francisco and I believe they simply published the same rate.

[fol. 844] Q. That is the so-called bulkhead demurrage basis on the assigned piers at San Francisco today, is it not?

A. That is correct. I know, however, that when I was first employed by the Port of Oakland that the operators of the Lawrence Terminal, who were operating on an arrangement from the City, used to make requests continually as to whether or not the storage charge could not be waived in order to get certain blocks of tonnage and meet the rates quoted by their competitors.

Q. Who were their competitors?

A. Well, there was the Encinal Terminals, Howard Terminal, and at that time Parr Terminal in Oakland. Those were the principal ones.

Q. Now, when the Board of Port Commissioners of the City of Oakland inherited this water front at Oakland from the Department of Public Works and this 12½ cents per ton per seven days demurrage charge, how soon thereafter was it that the present daily basis was put into effect?

A. When we first published the tariff No. 1. I think the date—one of the original pages shows the effective date.

Q. I am sorry that I cannot supply that. I don't have the original pages of this tariff.

A. Aren't there any original pages still left there?

Mr. Graham: Page 10 is one, adopted June 17, 1929, ef-
[fol. 845] fective June 20, 1929.

The Witness: I think that is when the daily basis was first started.

By Mr. Differding:

Q. Do I understand correctly that the 12½ cents per ton for seven days was in effect for substantially two years before you switched over to the per ton per day basis?

A. The Port of Oakland was constructing facilities and I don't think we did a great deal of operating much before 1929, so that we did not have occasion to assess storage charges prior to that. However, we did work out with the private terminal operators through conference in the Port of Oakland office some schedules for the various terminal services, including that of wharf storage.

Q. What, if you know, was the basis of your competition on the East side of the bay for wharf demurrage charges up to June of 1929?

A. Well, as I was able to determine through the requests that came to me from the operator of the Lawrence Terminal, I would say that there wasn't any definite basis.

Q. Well, do you mean as to specific charges of special commodities, or the whole rate structure applicable to wharf demurrage cargo?

A. I think they were probably endeavoring to follow this 12½ cents per ton per week, but I think I am safe in saying that there were a great many exceptions, so far as the as-
[fol. 846] sessment of that rate was concerned.

Q. And it is true, Mr. McCarl, is it not, that pursuant to decision No. 20531 in California Railroad Commission case No. 2501, the private terminal operators in San Francisco Bay and other places in California were required to file wharfinger tariffs with the railroad commission? You are aware of that?

A. Yes, that is correct.

Q. And during the period after that decision was rendered and the publication of the various private terminal operators tariffs in San Francisco Bay, there were numerous conferences between you and these private terminal operators, particularly on the East side of the Bay, as to the basis of charges to be filed, is that not true?

A. That is right.

Q. And out of those discussions there was filed this so-called daily basis of wharf demurrage charges?

A. That is correct. I might state that it is my recollection that we started it out with 2 cents per ton per day on all commodities, and from that starting point, in endeavoring to meet the competition principally, I think, with State Terminal in San Francisco, we developed some rates lower than the 2 cents per ton per day which applied particularly to canned goods and dried fruits.

Q. Did you also take into consideration the so-called pen-
[fol. 847] alty and bulkhead demurrage rates then in effect on the San Francisco assigned piers?

A. We took that into consideration. However, our competition was more with the State Terminal at that time, and also we heard many rumors that the so-called penalty rates in San Francisco were not always assessed. I don't say that they were intentionally overlooked, but through their method of operation I think there was a good possibility of a good many of them being overlooked.

Q. Did you ever sit down with the members of the State Board of Harbor Commissioners of San Francisco or any of their executive officers for a discussion of these charges?

A. We did with the representatives of the State Terminal, and later on Pier 45, the Golden Gate Terminal. The name of the operator, however, was changed from time to time.

Q. In arriving at this per ton per day basis in 1929, were there any objections raised by your East Bay competitors to that basis of charge?

A. The daily basis?

Q. Yes.

A. Those were worked out with the private terminal operators. I believe we were all pretty much in accord. However, I believe as time developed they have not been so much in favor of the daily basis as some of the rest of us have. I think that—I know I have heard expressions from [fol. 848] some of the other operators, such as Parr Terminal, the Port of Stockton, as well as ourselves, in favor of the daily basis versus the period basis.

Q. Am I safe in assuming, however, that in so far as the Port of Oakland is concerned, they at that time were in favor of the daily basis and are of the same opinion today?

A. We always had been of that opinion, that that basis was preferable to the period basis, although we have sat down and endeavored to work out with the private operators. About a year or two years ago, I believe, we had optional schedules worked out on the daily basis and also on the period basis under certain conditions whereby the period basis might be applied to long time storage and the daily basis to a shorter period of storage. However, I don't know myself just why those negotiations were not pursued further at that time.

Q. Are you still as strongly in favor of the daily basis of wharf storage accounts, and by that I mean those commodities which stay a week beyond the free time period or a month, two months, and in some instances a year or two or three years, according to some of the operators' records; do you feel as strongly as you did back in 1929 that the daily basis is the proper and non-discriminatory and non-prejudicial charge?

Mr. Graham: That is wharf storage that you are talking [fol. 849] about, Mr. Differding?

Mr. Differding: I am talking about this long time storage charge.

Mr. Graham: On the wharf?

Mr. Differding: Yes.

A. We still feel the same way. It has worked out very satisfactorily in our case with our type of operation and facilities, and we understand it is very satisfactory to the shippers. I haven't heard of a single objection to it on the part of shippers. It simply means that everybody pays for exactly the amount of time that the space is occupied. Whether it should be on a daily basis or a period basis I think is a matter of opinion. I think the matter of the goods remaining in storage in transit sheds is a whole lot different than the goods being placed in warehouses, and in that connection, either now or a little later on, I would like to read these few words along that line which I think would explain my thoughts on that matter.

I think that the question of storing goods in transit sheds versus putting them into a warehouse for storage is a good deal like the comparison between a hotel and a dwelling or apartment house, where a man goes into a hotel and he pays for the actual time that he occupies a room. In the case of goods being put into the transit shed, as a rule they are not put there for storage purposes. They don't [fol. 850] know whether they are going to move out within the free time, one day after, two days after, or whether it might be ten days or a year. That is a thing we do not usually know at the time the goods are placed in the transit shed. They are placed there in the case of inbound water movement at the place of rest by the stevedores and removed by truck operators from the place where they are deposited by stevedores without any service in the way of transferring or piling with the exception of pineapple, which we pile. Otherwise, I think we might say we never have occasion to pile goods or transfer them from the place where they are deposited by the stevedores in the case of inbound water movement or the deposit by truck operators in the case of outbound movement. When we unload cars we put the goods to the place of rest on the dock where they are eventually picked up by stevedores without any further service being performed.

I would like to just read this short statement either now or a little later.

By Mr. Differding:

Q. Before doing that, Mr. McCarl—you will have a chance to read that statement—you referred to the matter of a man using a hotel room. You also agree, do you not, that the man that is operating that hotel is entitled to sufficient compensation for the length of time the man occupies that hotel, do you not?

[fol. 851] A. Yes; we have always been agreeable to sitting down with the other operators and suggesting that some of the rates are too low and should be increased.

Mr. Vaughan: May I interrupt? In your answer you meant wharf demurrage rates?

The Witness: Yes, but we call it storage. Demurrage indicates that it may be a penalty charge and we don't look at it that way.

Mr. Vaughan: Mr. Differding, do you mind at that point?

Mr. Differding: No.

Mr. Vaughan: You include in that statement that you have been always willing to sit down and discuss the matter of a cooperative arrangement, not only a penalty wharf demurrage charge, but also a proper scale for warehousing as such?

The Witness: We are always glad to sit down and discuss those matters.

By Mr. Differding:

Q. Mr. McCarl, in sitting down with your competitors have you ever made or caused to be made any cost studies that you felt represented the fair and reasonable cost to the Board of Port Commissioners of Oakland in performing these various wharf demurrage services?

A. No, sir, we have not.

[fol. 852] Q. And is it also true in your case, as Colonel Allin mentioned, I believe, on Friday, that these charges have been more or less plucked out of thin air and set down in the tariff and there they are?

A. I think they have been arrived at through competition rather than plucking them from out of the air.

Q. But in those instances where the charges of all of the East Bay Terminals are on a substantially lower basis than the charges in effect at San Francisco, how do you arrive at those particular types of rates?

A. I wouldn't say the charges are lower.

Q. I beg your pardon.

A. I wouldn't say that the charges are lower in the East Bay than they are in San Francisco. I know that we have lost tonnage to San Francisco by reason of the low rates at the San Francisco terminals.

Q. Assuming for the moment that the rates of San Francisco are higher than those you have, and you enjoy rates lower than those which are in effect in San Francisco, what reasons do you offer to justify those instances?

Mr. Jones: I think I will have to instruct you to refuse to answer that question. I have departed from my policy and have allowed some liberality, but this I think goes back to that matter of the basis.

Mr. Differding: I have in mind not so much the actual [fol. 853] volume of the rate, Mr. Jones, as the varying rates on different commodities substantially similar in characteristics, which might well be discriminatory between different users of the facilities and possibly create prejudice.

Mr. Jones: If it is on the question of prejudice, I prefer not to urge my objection.

Mr. Differding: That is what it is.

Mr. Jones: If it is for that purpose.

Mr. Differding: That is my purpose.

Mr. Jones: I withdraw the instruction.

A. I am glad to be permitted to answer that question because I would hate to have the wrong impression in the record. I think we are pretty safe in saying that there are very few rates, if any, lower rates that you refer to that were initiated by the Port of Oakland.

Mr. Scoll: Can you name it?

By Mr. Differding:

Q. I didn't necessarily mean initiated by you alone, but initiated by you and your competitors on the east side of the Bay on the one hand, and with a higher basis of charge on the San Francisco side of the bay.

A. I believe we have tried in the East Bay, the private operators and the Port of Oakland, to keep ourselves pretty much on a competitive basis with the terminals at San Francisco, ours being on a daily basis and theirs being on a period basis. Sometimes they are lower, and sometimes [fol. 854] the East Bay rates are lower, depending upon

the length of the storage. I know definitely in the case of canned goods and dried fruit for any long time storage the rates are lower in San Francisco. That is very definitely the case on a commodity such as fertilizers.

Q. It has been your experience for more than ten years now in this San Francisco Bay Terminal Competition that the matter of lower wharf demurrage charges does exercise a definite influence over the movement of cargo, does it not, from one terminal to another?

A. I think it is a very important factor, yes.

Q. And you feel also, do you not, that all of the users of your facility should properly compensate the terminal operator for the use of those facilities?

A. Oh, it depends very largely upon conditions. I think rates ought to be reasonable and I think that the matter of costs should be taken into consideration where possible. I think in the case of a port where the facilities have just been constructed, going through a pioneering stage, that if you take the cost of operating those particular facilities by themselves and make rates so as to be compensatory, that you would have rates that would drive business away and there wouldn't be any business.

Q. Well, assume with me, Mr. McCarl, that this Commission should find that the present charges of the East Bay [fol. 855] Terminal operators are entirely too low and an unfair competitive practice with San Francisco, and then take the lowest cost terminal facility on the east side of the Bay, or any side of the Bay, and set that up as the proper measure, and that that would be substantially under the costs of the Port of Oakland, would you have any objection to such a situation or such an order of the Commission and ignoring, as you have just stated, the high costs that may be found in your facilities because of the constructing structures that will last for many years as compared to some one of your competitors?

Mr. Jones: What do you mean by competition? in that question?

Mr. Differding: Would he object to a basis of rates that would be prescribed upon the lowest cost terminal in San Francisco Bay, which would be substantially under his costs?

Mr. Jones: You mean, would he go along and meet that rate?

Mr. Differding: Yes, all things being equal. Of course, there are other competitive factors, but, generally speaking, would he go along?

A. I think in determining a rate that the matter of cost has to be taken into consideration. I think, however, it is most difficult to determine just what the cost of the par-
[fol. 856] ticular demurrage is, or wharf storage, due to the different types of facilities and the different allocations of the cost items in the operation of the whole facilities. I think the facilities which were used in the study of the Railroad Commission—I am not quite so sure about the cost of wharf storage or wharf demurrage, but the other costs which were determined seemed to be quite reasonable and seemed to be satisfactory for the Port of Oakland.

Q. And those other findings of the California Railroad Commission with respect to dockage, tolls, and service charges, and a few other minor items have now been substantially or wholly adopted by the Port of Oakland, have they not?

A. Yes. I might state that the one item with which the officials of the Port of Oakland, and the Port of Oakland in general, were at variance with the railroad Commission was in the matter of wharf demurrage and wharf storage, which is set forth in a communication addressed to the Railroad Commission at the time of their investigation in 1936, which states quite clearly the position of the Port of Oakland.

Q. And is that the statement that you are now going to read from?

A. It is.

Q. Will you proceed to read it?

Examiner Basham: Wait just a minute. Let me see it.
[fol. 857] Mr. Scoll: Yes, I want to see it.

(The paper referred to was handed to the Examiner.)

By Mr. Differding:

Q. Now, to follow up that question, Mr. McCarl, as I stated on the witness stand Friday, Dr. Edwards and I found that the lowest cost facility which was comparable in efficiency and volume of tonnage to any facility on San Francisco Bay was the Howard Terminal, and asssuming with me for the moment that the United States Maritime

Commission should find that those costs of the Howard Terminal were the reasonable and proper costs upon which non-discriminatory rates would be constructed, and your costs were substantially higher, yet resulting in an increase in your rates, would you have any objection to going along with such an order?

A. I still feel it is quite difficult to determine just what the cost of wharf demurrage or storage is, and in the case of the Howard Terminal, I think, due to the fact that their facilities are quite old, constructed some time ago—I believe Mr. Howard has made the statement that they were constructed primarily for the handling of cargo between rail and vessels. When trucks came into the picture and became as important a factor as they are today, the costs determined at the Howard Terminal for wharf demurrage would not be representative. I believe if you would let me read this short statement it will——

[fol. 858] Q. Just a minute, before we get to that statement.

A. You told me to read it two or three times.

Q. Well, they may not be representative, but you also stated you did not believe the costs of the Port of Oakland would be the proper costs because of the fact of the huge expenditures put into the facilities to take care of the needs many years hence, and I think the answer is obvious that the rates that would result from using Howard's lower costs would be under yours, using your own costs.

Mr. Jones: I don't know if we can assume that, Mr. Differding.

Mr. Differding: If the rates are based on costs, that would be the inevitable result.

Mr. Jones: Not necessarily.

A. In my experience in terminal operation I think it is very difficult to determine the true cost for wharf demurrage. I agree that an effort should be made to try to determine costs, that ought to be an important factor in the making of rates, but I think the determination of rates for wharf demurrage and wharf storage, taking into consideration the fact that most of the major charges are for the account of some other service, it is most difficult to determine just exactly what the cost of wharf demurrage is.

Mr. Graham: Mr. Differding, may I suggest that I think your question assumed that if the Maritime Commission [fol. 859] should find these costs, would the Port of Oakland go along?

Mr. Differding: That is correct.

Mr. Graham: Now, it seems to me that we have not yet got an answer to the question. If the Commission cannot find what the costs are, obviously the assumption is of no value, but if they should find and do find, then I would like to have the witness answer the question.

Mr. Jones: May I say in regard to that question that I don't think Mr. McCarl would have the decision in the matter as to whether the Port would go along. He might indicate what his personal feeling would be, and, of course, his recommendation to the Board, but I don't think he can go any further than that.

Mr. Differding: I had that in mind. He is an expert witness and whether, of course, the Board would follow his recommendation is something else again, but it is upon his own knowledge and experience in the business that I am asking the question:

By Mr. Differding:

Q. Would you recommend to the Port that the resulting charges from the Commission's order be followed?

A. I would say that we have tried to be cooperative to the fullest extent in having uniform rates and practices throughout the district, and hope some time they will be brought more or less in line along the whole Pacific Coast, [fol. 860] although conditions are different in different sections, which makes it quite difficult to have an entirely uniform set of rates, so that if an order were issued by the Commission that seemed to be reasonable, of course, if the Commission had jurisdiction over the Port of Oakland we would have to follow. If they did not, it would be my recommendation that we cooperate to the fullest extent in trying to have uniformity and also to have fair and equitable rates both from the standpoint of the shippers and the operators.

By Mr. Scoll:

Q. Then your answer is "Yes?"

Mr. Jones: No, the answer is as he gave it.

Examiner Basham: His answers seem to be awfully long.

Can't you shorten your answer a little bit, Mr. McCarl? Go ahead.

The Witness: I might say that the condition—I think I answered the question.

By Mr. Differding:

Q. Before we get off on another one, answer this one: Assuming that all your competitors, whether they were publicly owned or privately owned, that each operator was going to publish the same charge in San Francisco Bay, and you didn't have to worry about competition at Portland, Seattle, or Los Angeles, would you recommend that the Port of Oakland go along with such a basis of rates?

[fol. 861] A. I believe if they took in Stockton, Richmond, San Francisco, Oakland, Alameda, and all the rest, that the Port of Oakland would not want to be holding out, if all the rest were in accord.

Q. And from that I assume that the answer is "Yes"?

Mr. Jones: As qualified.

A. Is that sufficient?

By Mr. Differding:

Q. Yes, as qualified, is that correct?

A. I will say "Yes, as qualified."

Q. Now, another matter, Mr. McCarl, is free time in the east side of the bay itself different from that at San Francisco, and was substantially the same procedure followed in the matter of free time back in 1927 up to the present time as that which has been stated here in connection with wharf demurrage or wharf storage?

A. The free time was arrived at through meetings with the other terminal operators about the Bay District and a uniform number of days was allowed for all trade routes, ten days.

Q. And did the Port of Oakland have objections to following the San Francisco basis of free time?

A. I don't recall particularly whether the Port of Oakland had any particular objection, but through the discussions I believe it was felt that the simpler we could get our rate basis—conditions were a little bit different on the San [fol. 862] Francisco side of the Bay than on the East Bay side; all the steamship people have their headquarters in

San Francisco, and it was a question, more or less, of pioneering, particularly in so far as the Port of Oakland was concerned, and we felt it would be better to have a uniform number of days for all trades, rather than to have a different number of days for the respective trade routes.

Q. Do you think that this pioneering is still going on, or have you more or less settled down to a normal routine at this time?

A. I think we are still doing some pioneering, but, however, we have signified our willingness to go along with the other operators in adopting the San Francisco free time schedule.

Q. Would the Board of Port Commissioners make any objection to the Railroad Commission of California that they were unwilling to go along with the recommendations as to free time in case No. 4090?

A. We said we had no objection to either retaining the present basis or changing it so as to conform to the San Francisco basis, whichever would be recommended by the Railroad Commission.

Q. Do you feel that the findings of the California Railroad Commission in case No. 4090 were reasonable and proper, based upon your judgment and experience in this area?

Mr. Jones: In so far as free time is concerned?

[fol. 863] By Mr. Differding:

Q. Yes, free time.

A. I think so. There might be different arguments as to just what the free time should be. It has been changed from time to time, but I think they are equitable as named in the San Francisco tariff, at least so far as my recommendation is concerned.

Q. Would you go ahead and read that portion of your statement pertaining to wharf demurrage that you previously referred to?

By Mr. Scoll:

Q. Before you read that, Mr. McCarl, I would like to ask a couple more questions. The title page of the Board of

Port Commissioners of the Port of Oakland Tariff No. 1, which is in the record as exhibit No. 70, states:

> "Board of Port Commissioners of the Port of Oakland, Tariff No. 1, naming rates, charges, rules and regulations (subject to change without notice)."

You consider, do you not, that the provision, "Subject to change without notice," applies to all the rates and charges that are published in that tariff? Am I correct?

A. That is right.

Q. And in that you reserve your right to make any changes, as stated, without notice?

A. Yes, I think I explained to Mr. Differding the reason [fol. 864] for putting it in there, because we did not want to obligate ourselves to give every shipper a copy of the tariff and be sure that he got all corrections, and we wanted to be able to enforce our charges. Anybody that requests a copy of the tariff, we are always glad to give it to him.

Q. But, nevertheless, under that provision you can and do change without notice?

A. We always put our changes in our tariff, but I wouldn't say all shippers receive copies of the tariff.

Q. I show you now a copy of exhibit No. 63, a Formula for the Determination of Port and Marine Costs for Rate Making Purposes, by Ford K. Edwards. Did the Port of Oakland make the reproduced copies, mimeographed copies, if that is what this is, which have been introduced in the record and been used in this proceeding?

A. The Pacific Coast Association of Port Authorities has had those reproduced at their expense. Mr. Abel, of the Port of Oakland, was President last year, and I was the Secretary, and we had those reproduced at the expense of the Association.

Q. Now, what services are rendered by the Port under the classification of Warehouse Storage after the cargo has reached a place of rest in the transit shed?

A. Principally a matter of space occupied by the goods.

Q. It is then rental of space, is that all?

[fol. 865] A. There is a certain amount of overhead expense in the way of maintaining records.

Q. Excuse me. I said services, not costs. What services do you render the consignee of the cargo or shipper of the cargo? Perhaps I can get at it with a little more detailed questioning. If there is high piling, who pays for that?

A. We absorb that if there is any, which is not very often the case, except in the case of pineapple, which I could explain.

Q. Will you explain it?

A. In the case of pineapple that moves into the terminal in very large quantities, in order to keep the pineapple in one section rather than to spread it throughout all of the transit sheds, which is quite lengthy at the Outer Harbor Terminal, and also to conserve space even though the pineapple is to be reshipped within the free time period, we find it desirable to perform quite a little piling service on this particular commodity. If it moves out within the free time period the piling is chargeable to the other revenues which are derived from the handling of the commodity.

Q. You mean the Port allocates it against that? There is no charge made against the consignee of the pineapple, is there?

A. There is no charge incurred. Under the tariff there would be no storage and the expense would have to be al- [fol. 866] located to the other sources of revenue.

Q. Such expense would be absorbed by the Port?

A. That is right.

Q. Then the Port determines when cargo shall be high-piled and when not, that is correct?

A. Yes.

Q. So that is within your discretion to incur that expense and absorb it?

A. That is right.

Q. Now, what about the situation where a consignee wishes to make only a partial removal of goods that are temporarily stored in the transit sheds under your wharf storage rate? Do you permit partial removal?

A. We do to a certain extent.

Q. Do you charge anything for that?

A. No. We do not permit promiscuous distribution, such as is permitted in the usual warehouse.

Q. How do you prevent it?

A. Well, we state in our tariff that the storage of goods is optional with the management, and we determine through our knowledge of various accounts as to whether or not there should be storage in warehouses where a lot of distribution is required and we very often refuse to accept certain shipments for storage.

Q. Now, if a shipper or a consignee should, however, re-
[fol. 867] quest the right to make partial deliveries, you would then permit it provided it didn't inconvenience the Port?

A. Yes, we make a number of partial deliveries.

Q. But you, in no case, make any charge for that privilege?

A. That is correct.

Q. It would happen, would it not, where there are partial deliveries, that the space occupied by that lot of cargo would be broken up during the course of those partial deliveries, is that correct?

A. Yes, possibly part of the shipment will be delivered during the free time period and the balance of it may be one day later, or two days later or three days later, or possibly some time later.

Q. Now, if there are consecutive partial deliveries, how do you assign the wharf storage rates on the amount that remains there at the end of each day?

A. The bill is once a month, so that the shipment—unless it is entirely delivered before the end of the month, in which case the actual number of days occupied by the goods is charged for. At the end of the month for the goods still remaining in storage the charges are assessed to cover that period.

Q. Now, in order to assess those charges properly and inspection and measurement would have to be made every day, would it not, in order to determine under your daily [fol. 868] storage rates how much was due?

A. No, all the charges are assessed on a weight basis and a record of the deliveries is furnished the office, and by their records it is determined the number of days occupied by the different amounts.

Q. Now, then, let us take a situation as an example: Let us assume that the free time expires today on a lot of cargo that is now at the place of rest in the transit sheds; tomorrow the consignee removes one half of the cargo and delivers it; on how much cargo is the wharf storage for tomorrow assessed?

A. On that portion that was delivered, if I understood you correctly, there will be one day.

Q. The free time expires today, so that beginning tomorrow morning you have the whole lot of cargo, but during the day the consignee delivers half of it. Now, would you make

a storage charge for tomorrow under your wharf storage rate?

A. On that delivery.

Q. On that one half of the cargo which remained or on the whole thing?

A. The portion that remains, you cannot determine just how many days that is going to remain, so you could not assess a charge on the portion that remains, but a charge has been incurred for one day on the half portion that remained one day over the free time period.

[fol. 869] Q. Or a fraction of a day?

A. Yes.

Q. You do not break it down to less than a day?

A. No.

Q. And on the following day a quarter of the original amount is removed; then you would assess your charge on Wednesday as of that quarter which had been removed?

A. That is correct. Individual bills are not rendered.

Q. I understand so; but an account is kept in your office and from that account the bill is made up after the cargo is removed?

A. That is right, or at the end of each month.

Q. Now, where cargo which is at the place of rest in the transit shed is removed to one of the back spaces, for instance, Terminal Building C, do you charge for the transfer?

A. That service would be most unusual. We very seldom do that. As I say, at the Outer Harbor Terminal outside of pineapples, pretty nearly all the cargo is outbound. You might limit that to the 14th Street Unit. We have some other inbound cargo over at Seventh Street Unit.

Q. Let us take the outbound cargo. Some of that is stored prior to its actual delivery to the transit shed in one of your warehouses, is it not, in terminal building C?

A. Unless it is going to long time storage pretty near all the cargo is put into the transit shed. We have a wide shed so as to accommodate the cargo longer than the free

[fol. 870] time period.

Q. Now, on the inbound do you ever transfer cargo from the transit shed to one of the storage places?

A. We have no space to transfer to. The transit shed is the only space we have.

Q. Then Terminal Building C is confined only to outbound cargo?

A. With the exception of Pineapple. We make that exception, but otherwise it is outbound.

Q. When that is transferred from Terminal Building C to the transfer space is there a charge?

A. If it is on a space rental basis there is a charge of 60 cents a ton. Those accounts are very limited. Otherwise, if there is any put in Terminal Building C, either from cars or trucks, and then transferred over to the transit sheds, that expense would be for the account of the Port of Oakland.

Q. Then you would absorb that cost or that charge?

A. Yes, but we would not put anything in Terminal Building C unless we had very good reason to believe it was going to stay there a long time.

Q. What other transfer costs, involved in moving cargo from one portion of your terminal to the place of rest where it will be ready for loading, do you absorb?

A. We don't have that. The cargo is interchanged between the rail and water carriers from the point of rest [fol. 871] without any service being performed by the Port of Oakland, with the exception of this Pineapple.

Q. If there is a car loading or car unloading service involved in the receipt or delivery of cargo which is held under wharf storage, do you assess a carloading or unloading charge under your tariff?

A. Yes, if the car loading or unloading service is performed we assess a charge.

Q. In response to questioning by Mr. Differding, you made some reference to the San Francisco rates, and you said that you had lowered the rates at one time or another in order to meet San Francisco competition. Now, will you state what those rates were that you lowered to meet San Francisco competition?

A. Canned goods and dried fruit, particularly.

Q. That is, the wharf storage rate was lowered?

A. Yes; a large part of our business consists of canned goods and dried fruits.

Q. And when was that rate lowered?

A. Oh, quite a number of years ago.

Q. Have you recently made any reductions in the wharf demurrage rate to meet San Francisco competition?

A. There are some rates now in San Francisco which are lower, but we have not met them. We have lost some business, however.

Q. Which ones are they?

[fol. 872] A. Fertilizer, particularly. That takes in quite a number of commodities under Fertilizer and Fertilizer materials.

Q. A number of commodities, but actually, for the purpose of the charge, it is a single classification?

A. That is right.

Q. Have you any other classifications in mind?

A. Their rates are lower on other commodities; however I don't recall that they have been particularly competitive. They have trans-Pacific service, where the Port of Oakland does not as yet have that service, at least to the same extent that San Francisco does.

Q. So that on some of these that you are referring to, San Francisco is lower than Oakland, on some of these charges, and you acknowledge that Oakland then is not competitive with San Francisco?

A. We don't have steamer service, and we don't see any necessity for putting in rates where there is no movement.

Q. That is what I was getting at. Let us confine ourselves to the classifications of commodities in which you are competitive, and tell me what wharf demurrage rates you have recently lowered in order to be competitive with your East Bay competitors.

A. Competitive with the East Bay competitors?

Q. Yes.

A. As far as the East Bay operators are concerned, we [fol. 873] usually discuss any proposed rate changes prior to making them effective, and therefore we nearly always put them in at the same time. As mentioned a little while back, however, I think I am safe in saying that by far the greater percentage of the reductions have been initiated by the competitors of the Port of Oakland.

Q. Have you any specific classifications or commodities in mind when you say that?

A. Well, I believe some time after we lowered out rates on fertilizer—not to the extent that San Francisco did, however,—then we made some increase. I might put it this way, we made some increase in the fertilizer rate which made the East Bay rates higher than the San Francisco rates; after which we lost some tonnage to San Francisco.

Q. When did that take place?

A. I think that was during 1938 or 1939.

Q. Now, then, give me an instance of the commodity in which you are competitive with either of the Bay Terminals, where in recent times you made a reduction in order to be competitive with the others?

A. Beans and grain.

Q. When was the bean reduction?

A. I just have the current pages in our tariff. That was, I would say, about three years ago.

Q. Who initiated the reduction in the East Bay?

A. I believe Parr-Richmond Terminal and Stockton to-
[fol. 874] gether. I don't recall which one had the lower rate in first, but we with the other terminal operators succeeded in getting them to make some increase in their rate. They used to have three-quarters of a cent per ton per day and they now all have one cent.

Q. What other operators are you talking about? Are you talking about your East Bay competitors now? I am trying to confine this to your East Bay competitors?

A. Parr-Richmond Terminal we consider an East Bay Competitor; and I believe the other private operators, Howard and Encinal, all wished to meet the rate of Parr-Richmond Terminal, probably more so than ourselves, because at that time we were receiving practically no beans.

Q. Did you discuss this reduction with them?

A. Yes.

Q. Now, what about grain that you mentioned? When did you reduce grain to meet competition with an East Bay Terminal, and which East Bay Terminal?

A. It was along about the same time, and the Parr-Richmond Terminal, I believe, was the principal competition that we had to meet. The other private terminal operators likewise were handling much more grain than we were. I don't want it to appear that I am putting the burden on them, but I think it is a fact that we were not so much interested in it at that time as they were.

[fol. 875] Q. And you discussed that with them prior to making the change?

A. Yes. As a matter of fact, there was a hearing before the California Railroad Commission, which ordered some adjustment in the rate at the Parr-Richmond Terminal, or as a result of that hearing an adjustment was made; I think it was voluntary.

Q. Voluntarily made by all of the East Bay Terminals?

A. Yes.

Mr. Townsend: What commodity was that, please, that you were talking about?

The Witness: Beans.

Mr. Scoll: We were talking about grain.

By Mr. Scoll:

Q. That same thing applied to grain?

A. Yes.

Q. And they were both made about the same time?

A. That is my recollection, yes.

Q. You have made it a practice, have you not, on these matters, to discuss with your East Bay competitors these reductions that are necessary to meet competition?

A. We have. Whether we are in violation or not, we have.

Q. Now, will you mention a commodity or a class of commodity in which you have been competitive with East Bay and in which you are primarily or were primarily interested?

[fol. 876] A. We were interested in these commodities too, but I don't think to the same extent at that time as Howard and Encinal were, because they were handling the greater volume of the business.

I think another one was wool. That rate has gone down and then gone up again, and at that time I recall particularly, I think some commitment was outstanding on the part of the Port of Stockton and we reduced our rate to meet that competition. We consider Stockton and East Bay competitors too.

Q. And when was that?

A. Oh, that was about two or three years ago.

Q. What about canned goods, for instance? What is the competitive situation on canned goods?

A. That rate of $1\frac{1}{4}$ cents per ton per day has been in effect for quite a number of years.

Q. Among all the East Bay Terminals?

A. No; at the Parr-Richmond and at Stockton they used to have a rate of three-quarters of a cent a ton a day. Through conferences we succeeded in getting them to increase their rate to $1\frac{1}{4}$ cents per ton per day so that we are all on a uniform basis.

Q. Now, your attorney, Mr. Jones, very kindly furnished me with a list of leases and licenses of firms that hold from the Board of Port Commissioner of the City of Oakland, and I would like to read the names of those lessees and

[fol. 877] licensees to you, and ask you a question or two about each one. Three of them that are here I will not question you about because they are already in the record, and those three are Albers Brothers Milling Company, Howard Terminal, and the McCormick Steamship Company. The latter holds under a license and the first two under leases, I believe.

The Atlas Imperial Diesel Engine Company; what space do they rent?

A. Some of those industrial leases out in East Oakland, the so-called Brooklyn Basin, I am not very familiar with. There are some long time leases, and just recently here, as a result of a court decision, the Port of Oakland reacquired that property and have negotiated some new leases. They do not involve tonnage over the terminals particularly; they are private industry.

Q. For manufacturing establishments?

A. Yes.

Q. Or processing establishments?

A. Yes, they are manufacturing.

Q. Do they adjoin any of the terminals?

A. No, none of the general cargo terminals. They are out near a couple of lumber facilities, out in East Oakland.

Q. What about California foundries? Does the area that is leased to that concern adjoin one of the terminals?

[fol. 878] A. No, that is not a competitive type of lease at all. I mean, as I say, it does not affect the other terminal operators as far as competition is concerned.

Q. Well, I——

A. The reason I am not familiar with that lease——

Mr. Jones: Possibly, Mr. Scoll, I know more about these leases than Mr. McCarl does. They were all drawn in my office, and outside of those particular leases which involve shippers such as Rosenberg and Libby, Mr. McCarl would have very little to do with the negotiation of the lease.

The Witness: Maybe I can tell you the ones I am not familiar with and he can take those.

By Mr. Scoll:

Q. All right, we can do it that way. Coos Bay Lumber Company?

A. That is the arrangement with the Coos Bay Lumber Company at the Ninth Avenue Terminal. The lease has

just recently been renewed. They pay a stipulated amount of rent and ship their lumber over the Ninth Avenue facility.

Q. So that is a lumber storage arrangement, is it?

A. Yes, they have a storage area in the rear of the Ninth Avenue wharf.

Q. Which is under license to the McCormick Steamship Company?

A. Half of the shed of the Ninth Avenue Terminal is [fol. 879] under assignment to McCormick.

Q. Do they use your side or their side?

A. They just ship the lumber and they operate over the Oakland Dock, which is handled by the Port of Oakland, and McCormick has nothing to do with it.

Q. Now, J. E. Higgins Lumber Company?

A. I think probably Mr. Jones can give you information on that.

Mr. Jones: That is Stroebel.

The Witness: That is Stroebel Hardwood. They have a lease facility in proximity to the Grove Street Terminal, that is, I would say not very far distant from the Grove Street Terminal. They utilize that facility for the storage and sale of hardwood lumber. They ship some of their lumber through the Port of Oakland facility and some of it through a private facility.

Q. And both of those companies rent on a square foot basis?

A. Their flat rental is based upon the value of the facility or—I don't think it is on a square foot basis.

Mr. Jones: I might correct that statement. Any of the long term leases, every lease of more than one year, by our charter has to be let out by public bidding, so it is impossible to say upon what particular basis the figure is arrived at.

Mr. Scoll: I see.

[fol. 880] By Mr. Scoll:

Q. And S. T. Johnson, do you recall that?

A. I think Mr. Jones can give you more information on that.

Q. All right, we will skip the ones you cannot answer on for a moment. Marine Trading Company?

Mr. Jones: That is a fisherman's pier.

A. I think he knows more about that than I do.

By Mr. Scoll:

Q. The L. K. Wood Lumber Company?

A. That is a lumber concern which has a lease from the Port of Oakland for a facility at East Oakland used exclusively or at least used, for the handling of their lumber primarily. I think there is a reservation in there, if I recall correctly, whereby the Port of Oakland may use the facility if it so desires.

Q. The Union Diesel Engine Company?

Mr. Graham: May I stop you there? He didn't say whether these people used the Port of Oakland.

Mr. Jones: There is a public dock in front of the L. K. Wood plant and they use it.

Mr. Graham: A Port of Oakland dock?

Mr. Jones: Yes, sir.

By Mr. Scoll:

Q. The Union Diesel Engine Company?

A. I think Mr. Jones can tell you more about that.

[fol. 881] Q. The Parr Terminal Company?

A. The Port of Oakland took over from the Parr Terminal Company the transit shed in the Outer Harbor area which we now designate as the Seventh Street Unit of the Outer Harbor Terminal.

Q. You operate that now?

A. We operate that as part of the Outer Harbor Terminal.

Q. Is this lease in existence?

Mr. Jones: The rear portion of the lease, which was not recaptured by the city, is still operated by the Parr Company, that is, it is sub-leased by them to other concerns but they collect the rental.

The Witness: I was not sure whether that was Parr Terminal.

Mr. Jones: It is where the oil tanks are.

By Mr. Scoll:

Q. Moore Dry Dock Company? Is that the Moore Shipbuilding?

A. Shipbuilding, yes.

Q. Is that adjacent to one of your terminals?

A. It is adjacent to the Howard Terminal, quite near distant to the Grover and Market Street Terminal, but more closely related to Howard Terminal.

Q. And they use the Port of Oakland facilities?

A. For part of their traffic, and these private terminals for part. I think maybe the private operators get more than we do.

[fol. 882] Q. Do you know whether the sub-lessees who still hold under that portion of the Parr Terminal lease which is still operative use the Port of Oakland facilities?

A. Yes. As far as the bulk storage facilities for the storing of petroleum products are concerned, those are handled through pipe lines which connect with the vessels at a wharf in the Outer Harbor Terminal.

Q. Now, the Libby, McNeil & Libby lease; is that a lease of facilities that adjoin the terminals and are operated by the Port?

A. That lease covers the Terminal Building B, immediately in rear of the transit shed of the Outer Harbor Terminal. They pay a rental for that facility and are required under certain conditions to route their traffic through the Outer Harbor Terminal.

Q. They are required to route their traffic over your terminal?

A. With certain exceptions.

Q. What about Rosenberg Brothers & Company, A and AA?

A. That is similar to the lease with Libby, McNeil & Libby.

Q. And contains the same provisions?

A. Yes.

Q. Rosenberg Brothers & Company, E.

A. That is the same, simply that they held a structure at [fol. 883] different times, and collectively, you might say, they make one operating unit now.

Q. And that lease covers facilities that are adjacent to the Oakland Terminal?

A. The Outer Harbor Terminal, yes.

Q. And similarly, they have covenanted to use the Oakland Terminal for their goods?

A. That is right.

Q. Now, do you know if any of the other leases that we have read, in addition to the Libby, McNeil & Libby and Rosenberg leases, with the exception of Albers, which is already in the record, contain covenants that they will use the Port of Oakland facilities?

A. I think that is one——

Mr. Jones: I can shorten that, Mr. Scoll, and stipulate that practically every lease that we draw contains a provision that the lessee shall ship over the municipal docks if he can do so, getting the service of vessels at not to exceed the cost at any other terminal in San Francisco Bay. That is the general policy of the Board of Port Commissioners.

Mr. Graham: May I ask in this connection right now, with your permission, Mr. Scoll, if there is a uniform clause to cover this subject, and, if there is, might we have it in the record?

Mr. Scoll: I was going to suggest later on or ask them [fol. 884] if they would furnish copies of these leases.

Mr. Graham: That would be better yet.

Mr. Jones: I think that is impossible. In the first place, some of these leases are—let me say this: I can furnish blank mimeographed forms which cover practically all of our leases. In other words, we have a standard form of a long term lease and a standard form of a lease for one year or less. I will be glad to furnish those, but the detail that would be necessary—after all, there are so many of those leases that I don't see it would serve any useful purpose, and, besides, I think I have been rather liberal from my own point of view in allowing the testimony along this line. I don't see the relevancy of our leases to persons who — not subject to this proceeding.

Mr. Scoll: I don't want to burden you unduly to perform a lot of unnecessary work, but we have in the record already the Albers Brothers lease which contains a clause with respect to using the facilities of the Port of Oakland and also certain clauses regulating competition.

Mr. Jones: I wouldn't construe it that way.

Mr. Scoll: At least it might be so construed. Now, as I say, I don't want to cause you a lot of unnecessary work,

so if we could perhaps confine the requests to those leases which the witness has testified to, which contain those clauses, which he knows about, then we can cover the rest of [fol. 885] it by your standard form.

Mr. Jones: Practically all of them do. As a matter of fact, every lease that has been drawn in recent years does contain that provision.

Mr. Scoll: Well, will you furnish for the record copies of the Rosenberg lease and Libby, McNeil & Libby?

Mr. Jones: May I explain that in connection with the Rosenberg leases there are three such leases; two of them expired last November and negotiations are now in progress looking toward the renewal of those leases, so that what you have now is merely a holding over on a month to month basis, and it is merely a temporary thing. In so far as the lease on Terminal Building E is concerned, that continues for two years in the future.

Examiner Basham: Have we reached a convenient stopping place here?

Mr. Scoll: Off the record for a moment.

Examiner Basham: Off the record.

(Discussion off the record.)

Mr. Scoll: I will ask the witness to identify these and we will put them in the record.

By Mr. Scoll:

Q. I show you now a newspaper copy of a notice of intention to make a lease, which bears at the bottom of it a pencil notation, "Warehouse A, Rosenberg," and on the other side is the date, "Oakland, California, Friday, April [fol. 886] 6th." Can you state whether that is the notice of intention that was published with respect to the Rosenberg lease?

Mr. Graham: May I ask which one of those this is if you can tell?

Mr. Scoll: I am going to.

A. I understand that is correct.

By Mr. Scoll:

Q. Do you know which terminal that applies to?

A. I believe that is the last one.

Mr. Jones: Won't it be in the title?

Mr. Scoll: I am informed by Mr. Jones that the notice of intention relates to Terminal Building A. I offer that document for the record.

Mr. Jones: For the purpose of the record I want to enter an objection as to the materiality of this lease in this proceeding. As far as the form, and so forth, go, I have no objection. I am, of course, pointing out that that particular lease has expired by its own terms.

Examiner Basham: What is the relevancy of this anyway, Mr. Scoll?

Mr. Scoll: It relates to the matters that we dealt with in connection with the Albers Milling lease, Mr. Examiner. You, at that time, ruled that the Albers Milling Lease was admissible, and this is admissible, I should think, on the [fol. 887] same grounds.

Examiner Basham: Is it true that this relates to a lease that has expired?

Mr. Jones: That is all true. Of course, in accordance with its own terms it is holding over subject to the same terms on a month to month basis.

Mr. Scoll: And the Rosenberg Brothers are holding under that lease such tenancy as they have?

Mr. Jones: Subject to the terms of the lease, yes.

Examiner Basham: I will receive it as exhibt No. 96.

(The document referred to was marked "Commission's Exhibit No. 96," and received in evidence.)

By Mr. Scoll:

Q. I show you now a typed copy, dated December 15, 1939, by and between the city of Oakland and Libby, McNeil & Libby. Can you identify that as a copy of the lease of the Libby, McNeil & Libby Corporation?

A. (After examining) Yes.

Mr. Townsend: What is the date of that?

Mr. Scoll: December 15, 1939.

Mr. Geary: What period does that lease run for, Mr. McCarl?

The Witness: Ten years.

Mr. Scoll: I offer it in evidence.

[fol. 888] Mr. Scoll: The same objection, Mr. Examiner.

Examiner Basham: It will be received as exhibit No. 97.

(The document referred to was marked "Commission's Exhibit No. 97" and received in evidence.)

By Mr. Scoll:

Q. I show you now a form of license and agreement for the use of wharf property. Can you identify this as the form of license which is customarily used in granting licenses or permits for less than a year by the Port of Oakland?

A. (After examining.) Yes.

Mr. Scoll: I offer it in evidence.

Mr. Jones: The same objection.

Examiner Basham: It will be received as No. 98.

(The document referred to was marked "Commission's Exhibit No. 98" and received in evidence.)

By Mr. Scoll:

Q. I show you at this time a Port of Oakland lease of real property, which is a mimeographed form. Can you identify this form as the form of lease which is customarily entered into by the Port of Oakland for leases of a year or longer?

A. (After examining.) Yes.

Mr. Scoll: I offer it in evidence.

Mr. Jones: Same objection.

Examiner Basham: It will be received as No. 99.

[fol. 889] (The document referred to was thereupon marked "Commission's Exhibit 99" and received in evidence.)

Examiner Basham: May we stop here, Mr. Scoll?

Mr. Scoll: Yes.

Examiner Basham: We might as well settle the question in regard to the night session. Who wants one?

Mr. Scoll: Mr. Examiner, I would suggest that it would facilitate our finishing here tomorrow if we can go on tonight. While I am in the position of being the Commission's lawyer and for that reason I don't want to be unduly anxious to ask for any favors that would inconvenience anybody, I would like to get through here tomorrow and get to the press of other work. I think that since we have

now three East Bay Terminals yet to be heard from, and possibly other witnesses who will want to take the stand, I would certainly like to see us have a night session.

Examiner Basham: What is the particular reason why we should get through tomorrow?

Mr. Graham: You will not get through tomorrow in any event. How many witnesses do you have to go yet?

Mr. Scoll: We have three witnesses to go, and that is already in the record: San Francisco Board of Port Commissioner, Encinal, Howard and Parr. Now, in view of the rather lengthy, detailed consideration that has been given to the question of just two witnesses, it is my assump-
[fol. 890] tion that we would go a little faster tomorrow. I think if we can finish with the Port of Oakland here today we will not have much trouble tomorrow.

Mr. Jones: Might it not be better to run tomorrow night if we find a night session is necessary?

Mr. Scoll: That would not work tomorrow night. I am leaving here tomorrow and I would not be able to go on tomorrow night.

Mr. Graham: As far as I am concerned, I will work if you want to. I must confess that night work slows everybody down after a long session like we have had today, but if you want to work I will not raise any objection.

Mr. Geary: What time would you convene, Mr. Examiner? It is now nearly six o'clock.

Examiner Basham: I suppose about seven o'clock. Off the record.

(Discussion off the record.)

Examiner Basham: What is the attitude of the rest of the parties toward a night session tonight?

Mr. French (Representing Mr. Kilkenny): As far as the Respondent Board of Harbor Commissioners for San Francisco Harbor, are concerned, we would not be favorable to going on tonight. We more or less understood that our witnesses would not be called until Mr. Kilkenny is here.

Mr. Scoll: That is right.

[fol. 891] Mr. French: And we have made our plans in accordance with that understanding, and I assume other people have business which is arranged in reliance upon your running during the regular hours. If we could know of it in advance so we could prepare for it, it would be all right.

Mr. Scoll: We are not going to call any witnesses from the Board of Harbor Commissioners. I told the Attorney that we would not call them until tomorrow. My reason for trying to get through here today with Oakland and with Howard is so we can call your witnesses the first thing tomorrow morning. That is part of the reason for having this night session, in order to be able to accom-odate you as I promised you I would try to do.

Mr. Vaughan: I have no objection to a night session but I do not think an hour's adjournment will give us very much time for dinner. I think we at least ought to have an hour and a half or two hours.

Examiner Basham: We will adjourn now and reconvene at eight o'clock.

(Whereupon, at 5:50 p. m. a recess was taken until 8:00 p. m. of the same date.)

[fol. 892] After Recess (Evening Session)

(The hearing was reconvened at 8:00 p. m. pursuant to the taking of a recess.)

M. D. McCarl resumed the stand and, having been previously duly sworn, testified further as follows:

Direct examination (continued).

By Mr. Scoll:

Q. I show you now, Mr. McCarl, a copy of a license of the Port of Oakland to the Keystone Steel & Wire Company, which is dated July 7, 1939. Will you examine this and identify it if you can as one of the form of licenses previously introduced as exhibit No. 98, which has been filled in?

A. (After examining.) I believe that is representative of the completed one.

Mr. Scoll: I offer it for the record.

Examiner Basham: It will be received as Exhibit 100.

Mr. Jones: The same objection, Mr. Examiner.

(The document referred to was marked "Commission's Exhibit No. 100" and received in evidence.)

By Mr. Scoll:

Q. You have a statement there which I believe you would like to read, and we have delayed you. Proceed.

Mr. Graham: May I suggest that the witness go kind of slow if he is going to read a statement, unless he has [fol. 893] a copy of it.

The Witness: I have a copy. (Handing to counsel.)

A. The following is a brief statement which pretty well portrays my views on the matter of wharf demurrage and wharf storage.

In considering these items, that is, wharf demurrage and wharf storage, a great deal of thought must be given to the type of facilities involved and the underlying causes which prompted the designing of such facilities. In the early days of terminal operation, due to the fact that most of the trucking at the terminals was performed by hand transfer, each truckload of very small weight requiring the time of a laborer, it was essential that very narrow transit sheds be designed and constructed, as the item of labor was one of the principal items of cost of terminal operation. With the advent of automotive equipment, however, for the movement of goods about the terminal, the item of labor became of secondary importance, and in the designing of transit sheds, sheds of much greater width were adopted. With these modern facilities containing much greater areas than those of early design, large cargoes can be accom-odated with a minimum of labor expense. The cost of carloading, car unloading, high piling, stevedoring, etc., have been greatly reduced. Also, in the designing of terminal facilities, it is necessary to make pro- [fol. 894] vision for the accom-odation of increased traffic which a terminal operator naturally expects to develop. Before a terminal operator can solicit the patronage of steamship lines, it is necessary that he first have sufficient facilities to accom-odate the tonnage—both inbound and outbound—to be handled by such lines, with proper allowance for expansion. Thus it would appear that the investment in transit shed facilities is primarily chargeable to the transit movement of cargo. The goods are placed in the transit sheds for movement, as a rule, within a certain period of time, known as free time period. The principal revenues to the terminal accrue in connection with the

transit movement, all labor services, as a rule, being performed in connection with the transit movement. Should the goods remain on the space on which they have been placed for transit movement, one, two, three or more days beyond the free time period, there is no additional labor expense whatever as the space is generally not actually required for the handling of new cargo. This has reference to modern facilities. All the municipal facilities of the Port of Oakland which have been constructed during the past ten years and which constitute practically the entire direct terminal operations of the Port are of modern design. These facilities were paid for by the public, and it is expected by the public that they will be accorded just and reasonable rates in keeping with the cost of the service [fol. 895] provided. We do not see how the Port of Oakland would be justified in assessing a charge for any service which it does not perform. We have reference here to the item of "Handling" or "Transferring and piling" in connection with goods which remain in the transit sheds over the free time. Neither do we see how the Port of Oakland can consistently assess a charge for a period of say 30 days' time, when the space for which the charge is assessed is utilized for only a small fraction of such time.

From the standpoint of competition, and "what the traffic will bear", it is necessary that consideration be given not only to competitive terminal and warehouse facilities within the San Francisco Bay District, but also to competitive facilities at points of shipment—other ports—interior warehouse facilities and facilities of shippers at their industry or plant locations.

By Mr. Scoll:

Q. Mr. McCarl, Colonel Allin stated that it was his opinion that a proper wharf demurrage charge should be a penalty charge. Do you agree with that statement?

A. No, I don't. I naturally recognize the fact that in the case of certain types of facilities which were not constructed with the view of taking care of storage, in that case it would seem as though it should be a penalty charge. However, with the facilities constructed of ample area, such as the Port of Oakland facilities, we think that it is [fol. 896] perfectly proper to permit the goods to remain in storage, and it really adds to the revenue of the terminal

operator, rather than to decrease the amount of such revenues.

Q. You regard your terminals, that is, the Port of Oakland Terminals, as being somewhat in the development stage, is that correct?

A. I would say we had not passed the development stage yet.

Q. And so that the policy of the Commissioners who control the Port and its facilities, is to do whatever is necessary and to take whatever position would secure a greater movement of cargo through the Port of Oakland and across these terminals?

A. To the extent that we consider it in the public interest to do so.

Q. Well, in your leases and your various activities you have sought to follow out a policy which regards the port facilities which you have there as not yet in their fullest use, is that correct?

A. Yes, that is correct.

Q. And you are anxious to bring them to their fullest use?

A. Yes, and to possibly construct additional facilities. Sub-structures have already been provided so that if you increase the present facilities it would require only the addition of the superstructure.

Q. Have you plans to increase the present facilities in [fol. 897] the near future?

A. That has been given some consideration. It was considered by the Port during the last heavy shipping season.

Q. And how are such additional facilities to be financed?

Mr. Jones: I submit, Mr. Examiner, that that is absolutely immaterial to this hearing.

Mr. Scoll: The reason for my question, Mr. Examiner——

Examiner Basham: Overruled.

A. The original facilities were constructed out of bond moneys, and additional facilities have been constructed out of revenues obtained from the operation of the Port, and the original issue of $10,000,000 has not been depleted.

Q. Do the Commissioners of the Port of Oakland have authority under the statute to issue bonds?

A. It is my understanding that the City Council has to approve any bond issues.

Q. But, subject to such approval as is provided by the statute, the Board of Port Commissioners of the Port of Oakland have raised money through the issuance of bonds, is that correct?

A. Yes. I think my last answer should be that the voters have to approve the bond issues, rather than the Port Department of the City Council.

Q. That is, the voters of the municipality?

A. Yes.

[fol. 898] Q. And then after an issue of bonds has been approved by the voters of the city of Oakland, then such bonds are sold to the public and the funds derived therefrom are funds for the exclusive use of the Port of Oakland?

A. If the bond issue is for such purpose; whatever purpose it is.

Q. Do you happen to know how much money has been obtained by the Board of Port Commissioners of the Port of Oakland through the issuance of bonds up to date?

A. Some of the funds derived from the original issue of $10,000,000 have been used for airport purposes. I do not recall right offhand—maybe I can find in my records here; possibly Mr. Jones might know, exactly how much has been spent for terminal improvements. I believe it is probably somewhere between $7,000,000 and $8,000,000.

Q. Now, have there been years when the revenues from the terminals have not equaled the expenditures?

A. The provision whereby the interest on the bonds is to be taken care of through taxation through the City Council, means that we do not take the item of interest into consideration. Outside of the item of interest the revenues have always been more than sufficient to cover the other expenses.

Q. Now, then, the interest on the bonds is obtained through direct taxation of the municipality?

A. That is provided for in a charter amendment.

[fol. 899] Q. And by a vote of the City Council of Oakland?

A. By a vote of the People; that was provided for.

Q. But I mean, if there are not sufficient funds in the Treasury of the Port or the municipality to meet those interest payments, then a tax is levied to meet them?

Mr. Jones: I think I might clear that up, Mr. Scoll. It has been the policy of the Board of Port Commissioners not to use its revenues for the amortization of or payment of interest on the bonds, but to take its operating revenues and plough them back into facilities, and outside of certain sums, more or less minor, in cash which have been given to the Council, all of the amortization and interest payments on those bonds have been serviced by direct taxation. I might say that our operating revenues are sufficient to meet all those bond requirements, but that is the policy of the Board.

Mr. Scoll: That is, are sufficient to meet them, including interest and amortization, over and above operating expense?

Mr. Jones: Yes, interest and amortization.

The Witness: Additional facilities have been constructed out of these earnings.

Mr. Scoll: I have no further questions.

By Mr. Differding:

Q. I have a few questions, Mr. McCarl. I show you [fol. 900] exhibit No. 61 in this proceeding, which is the final report of Dr. Edwards and myself, and at page 102 an illustration is given of two tons of canned goods piled on the dock one tier high for 60 days, which shows an overall cost of 85.48 cents, and the individual items are: Checking, 5 cents per ton—as I understand your contention in that respect, it is that the charge is not incurred, is that correct?

A. Yes, that is my view, that the checking is chargeable to another item of revenue.

Q. And what item is that?

A. The service charge, and the car unloading sometimes.

Q. You hold that view even though there may be handled such a type of account as is shown on pages 106 and 107, which shows a typical type of so-called distribution from the docks by one of the terminals on the east side of the Bay, and yet you contend that there is no additional checking involved in the distribution of such a shipment, is that correct?

A. I would not call that typical for the Port of Oakland at all.

Q. Would you say that you have never handled on your docks inbound shipments typical of that shown on 106, and 107?

A. I would say that would be a very extreme case if we handled it at all.

Q. Now, I am asking you if you ever had a shipment of that kind?

A. I would say possibly a shipment.

[fol. 901] Q. Now, bearing in mind that the costs shown on page 102 for this typical shipment of canned goods are the average costs of all the tons involved at the lowest cost facility, we still find 5 cents per ton average. Do you feel that that cost is not representative of what transpired on the Port of Oakland facilities?

A. I would want to give that a lot of study before I would say that was a representative cost.

Mr. Graham: What page is that?

Mr. Differding: That is page 102.

Mr. Graham: Thank you.

By Mr. Differding:

Q. The next item is Miscellaneous moving, where it was found that the average cost on all the tons handled for a yearly period was 2.5 cents per ton. Do I understand correctly that you do not incur a similar cost at the Port of Oakland?

A. I would say that is not representative of the municipal facilities. Very seldom do we move any cargo.

Q. But can we understand that there is some cost, however slight it may be, that is incurred for checking and miscellaneous moving which would not ordinarily be incurred on cargo that is handled under the service charge during the free time period, is that correct?

A. I would say the average would be very small. The high piling of pineapple would have some tendency to make [fol. 902] some charge, but outside of that there is very little that could be charged to the moving of cargo.

Q. But, in any event, you do find it necessary on your inbound shipments of canned pineapple to occasionally high pile the goods, is that correct?

A. We do.

Q. And that purpose is to conserve space on the docks?

A. Both in connection with transit movement as well as storage.

Q. And the Port of Oakland absorbs those costs?

A. I wouldn't say we absorb them. We get good revenue both on the inbound movement and the outbound movement.

Q. I am referring to the cost of high piling. You do not pass those charges on to the shipper or the vessel in any way, do you?

A. If it moves within the free time period I don't see how they could be. It could not be charged against storage if they moved out during the free time period, but they still exist on lots of occasions.

Q. The next item is Non-variable overhead, 7.1 cents per average ton, which is explained on page 100 of exhibit 61, and I direct your attention to those items and ask you if you do not incur similar expense in the operation of your facilities and the handling of wharf demurrage cargo?

A. I would say there is some overhead expense chargeable to storage; just how much I think would be quite diffi- [fol. 903] cult to determine.

Q. But you will agree with me that there is some?

A. Yes.

Q. Now, the next item is Variable Overhead, which is 18.34 cents per average ton, which is explained on page 101 of exhibit 61. Would you mind looking over those items of expense to see if they are typical in some degree of the expense incurred by the Port of Oakland in handling wharf demurrage cargo?

A. I would say there is some expense but the determination of it would be quite difficult to obtain.

Q. But again you will agree that practically all of those items, to some extent, whatever degree it may be, do exist in your accounts as well as we found in the accounts of the private terminals?

A. To some extent, yes.

Q. Now, the next and final item is Floor Space cost for two tons, taking 7.4 square feet per ton at 3.55 cents per ton for thirty days, which, for the illustration, two tons of canned goods, amounts to 52.54 cents per ton. Now, on these facilities which you have just described, which the Port of Oakland has in recent years constructed, you have no quarrel but what that figure at least approximates, or

more probably is under, the similar floor space cost for the facilities operated by the Port of Oakland?

Mr. Jones: Just a moment, please. There is no showing [fol. 904] that this witness has made any cost study at all about the per square foot cost of these structures. The record does show that these structures are of a different kind from those to which this exhibit refers. Now, it may be that the cost of construction is higher or lower, but that is not in evidence. However, it may well be that the life of these structures is to be extended over a much greater number of years, and so, in figuring the necessary revenue to be derived per year per square foot by those structures, all those factors have to be taken into consideration. The witness has not been shown to have the information necessary to enable him to answer the questions.

By Mr. Differding:

Q. You have never made such a study yourself of the facilities operated by the Port of Oakland in handling wharf demurrage cargo, have you, Mr. McCarl?

A. No, I have not, and my views as to how to determine that expense are, I believe, somewhat at variance with some of the other views too. I do not feel particularly that because the car space is occupied for one or two days over the free time that the cost of the facility is particularly chargeable to storage because I believe ample space is provided in the structure so as to accommodate a certain amount of cargo over the free time, and that space very likely would not be used for transit cargo, and it provides a [fol. 905] revenue that would otherwise not be provided.

Q. I see. But you have seen fit in your other services, and without any cost studies, to assess this 10 cents per ton increased toll charge, which was put into effect on December 1, 1939, haven't you?

A. Yes; that has not been based on cost; it has been based on competitive conditions and what the traffic will bear.

Q. And you have also ceased to put in a different basis of dockage charges some time in the latter part of 1936 or the first part of 1937, which resulted in increases against the vessel, have you not?

A. That is correct.

Q. And you have similarly done the same thing in the matter of service charges against the vessel, haven't you?

A. That is correct.

Q. And do you agree with me that, all the factors being equal, the individual users of your different services should pay in proportion to that use?

A. To a certain extent. I think we have to keep in mind too what will provide the greatest revenue, keeping in mind the public interest. I think there have been Commission decisions to the effect that sometimes reductions of rates are keeping the rates down provides greater revenue and are more in the public interest than increasing the rates.

Q. What has been the experience of the Port of Oakland [fol. 906] in keeping the rates down as to the volume of business handled?

A. I think we have tried to keep ourselves on a competitive basis, and our tonnage has increased from year to year. We attribute that to our facilities, service, and rates.

Q. Do you expect the tonnage to continue to increase now that you have increased the tolls and you have increased the service charges, and you have increased the dockage charges?

A. We have not upset our competitive relationship with the other operators. We all increase it by the same amount and at the same time.

Q. And, similarly, do you feel that if all your competitors adjusted their wharf demurrage basis of charges differently from what it is today, the same thing would hold true as has been your experience with these other charges?

A. We would have to take into consideration all our competitors.

Q. I have that in mind.

A. That includes competitors and points of shipment, not just competitors located in the Bay area.

Q. But do you have in mind there some private warehouse or facility of a shipper?

A. Well, I recall, for instance, on coastwise traffic, that storage is welcomed at the northern ports. Shipments of paper and flour have been held in storage in the north [fol. 907] rather than ship them down here for storage, possibly shipping here in smaller quantities, on which I think if our rates were out of proportion with the rates at the point of shipment the goods would be held in storage at the point of shipment rather than at point of destination, we being the point of destination in this case.

Q. But, primarily, your competition is with your fellow terminal operators in San Francisco Bay and probably Stockton, is it not?

A. In general, yes.

Q. Do you compete with Stockton in the handling of flour inbound from the northern mills?

A. Oh, I don't think so, I think the flour that we get is consumed more within the Bay area. I don't think that we are particularly competitive.

Q. And, therefore, you have had no concern with Stockton's 15 day free time on flour as compared with your ten days free time on flour?

A. It hasn't disturbed us any.

Q. Isn't that true with all the other wharf demurrage commodities that you and your competitors handle in San Francisco Bay?

A. I think we are more concerned with some of the commodities, particularly outbound canned goods and dried fruit, and so forth.

[fol. 908] Q. What is your particular competition on canned goods?

A. Well, we have found that even one of our lessees, who is under the lease obligated to route his cargo through the Outer Terminal provided the costs are no greater than through other facilities, has used the Port of Stockton in preference to the Outer Harbor Terminal, due to lower costs.

Q. You are referring to the Inland Transportation costs, are you not, instead of these wharf demurrage costs?

A. No, at one time they had three-quarters of a cent a day and that was specifically called to our attention, as compared with our 1¼ cents.

Q. That has not happened since Stockton put their demurrage rates on a parify with yours, has it?

A. That has not been called to our specific attention. However, we do know cargo is routed through the Port of Stockton. Taking a number of items into consideration, we have been told that if we don't let the spread get too far out of line, we might still be able to hold some of the tonnage over our facilities by reason of more frequent steamer sailings, better climatic conditions, and the fact that the shippers are located and the brokers are located in the Bay area.

A number of items have to be taken into consideration in addition to costs.

Q. But, as long as Stockton has the same rate as you, you would still have those advantages, as you call them, of more frequent steamship service and brokers and financial [fol. 909] houses, and so forth?

A. Yes, but we must keep in mind the lower land transportation rates from certain points of shipment to Stockton.

Q. Do you have in mind shrinking your wharf demurrage rates to offset the land transportation?

A. I don't say that we should have any lower rates than Stockton, but I contend they are competitors of ours in considering the item of wharf demurrage.

Q. I suppose Stockton thinks they are a competitor of yours too, and some of the business you are handling they would like to get, and you would engage in competition for the same tonnage and drive your charges that much lower, wouldn't you?

A. We have never driven them any lower. We have always been perfectly agreeable to sitting around the table and discussing rates with all our competitors, and we have always been willing to cooperate and go along with any rates that appear to be reasonable.

Q. Let us take the westbound trade; the inbound cargo ordinarily is the so-called low density balloon cargo that you get on your docks, general merchandise, is it not?

A. It costs more to handle inbound by water, yes.

Q. You handle a considerable amount of that type of cargo over your Grove Street Pier, don't you?

A. Quite a bit; not nearly as much as we would like to handle.

[fol. 910] Q. Have you noticed any particular difference in your costs between handling inbound cargo at Grove Street and your so-called high density cargoes at the Outer Harbor, which are principally canned goods and dried fruit outbound?

A. We have not made any study of costs, but I think it is safe to say at least that the costs are higher on inbound cargo as a general rule than on outbound. However, there are certain inbound commodities, such as these heavy rolls of paper and some canned goods and other commodities, that have good density.

Q. But you will agree with me, will you not, that on the inbound commodities, general merchandise, handled at your Grove Street pier, the 85.48 cents per ton indicated here for two tons of canned goods on hand for 60 days, is considerably more on the average for the handling of inbound general merchandise, will you not?

A. I wouldn't particularly agree with those figures, not having made a study of them, but I will agree that it costs more to handle inbound cargo than outbound.

Q. You will agree also that the handling of general merchandise, restricting it only to the floor space cost, with some very small increases for available and non-available overheads, plus checking, is materially greater on general merchandise than it is on the high density commodities?

A. I don't recall just how you put that question. May I [fol. 911] have it read, please?

(The question was thereupon read by the reporter as above recorded.)

The Witness: I will say on general merchandise as a whole, yes, excepting certain commodities.

Q. In connection with your reference to the small importance that wharf demurrage has in your terminal operations, could you give me any indication of what percentage wharf demurrage may bear to the sum total of your other terminal revenues, excluding all the non-terminal revenues in that answer; whether it is one-half of one per cent or 15 per cent of the over-all revenue derived exclusively from your terminal operations?

Mr. Jones: Mr. Differding, by non-terminal revenues do you mean the revenues received from the lessees?

Mr. Differding: Yes, non-terminal is lessees of property——

Mr. Jones: Lessees of property not connected with terminal facilities?

Mr. Differding: That is right.

A. I don't have that information available. We could determine the revenues, however, and give you that.

By Mr. Differding:

Q. Could you say it is approximately less than five per cent or less than two per cent?

A. I would rather get the actual figures.

[fol. 912] Q. You would not care to hazard a guess?

A. No, I wouldn't care to estimate right off hand.

Q. Now, you also mentioned public warehouse competition. What particular warehouse competition do you have in mind that would prevent you from making any material adjustment in your wharf demurrage charges?

A. I think warehouse competition on beans and in the Valley warehouses, particularly.

Q. I appreciate your reference to beans, but let us take some other commodity.

A. Well, on long time storage I believe the sugar warehouses have a pretty low rate.

Q. Now, let us take general merchandise. Have you ever checked the ordinary run of your general merchandise with your competitive public warehouses?

A. We figure that the spread between rail and water is quite small sometimes, particularly in the coastwise traffic, and to increase any of the terminal charges would very likely throw a considerable tonnage to the rail movement and it probably wouldn't go to the warehouses at all.

Q. What specific commodities do you have in mind on coastwise?

A. Not only on flour for one, where there is a very small spread, but I understand that the spread on a number of commodities is very small. The spread on sugar is very small.

[fol. 913] Q. And that would, in turn, divert the traffic from the water carriers to the rail lines if the increasing of your wharf demurrage charges would have that effect, would it not?

A. Yes. You understand, I don't want to leave the impression that we are trying to hold rates down any more than our competitors, but we have not been responsible, I don't believe, for holding these rates down. A short time ago we sat around the table and prepared some proposed rate changes upward, both on the daily basis and on the period basis, which would be optional. I don't want you to think that we are opposed to some increases in some of the wharf storage rates.

Q. Well, the way you have been increasing the other services, I imagine further increases would not be objectionable, but I had no particular reason for thinking you did or didn't want increases. I propose to ask the same

questions of other witnesses to follow you, but I would like to ask you one or two more questions and I am through.

Generally speaking, your facilities are substantially the same as those operated by Encinal Terminals, are they not?

A. I would say the facilities themselves are the same, but I think there are a lot of competitive factors that are in their favor as compared with ourselves.

Q. No, just the facilities, that is what I am interested in.

A. The facilities themselves? I would say ours are just [fol. 914] as good or possibly a little better, as far as construction is concerned.

Q. They are also comparable to the Golden Gate Terminal, particularly, in San Francisco, are they not?

A. Well, you mean the method of operation?

Q. The type of facility offered to the cargo shipper as well as the vessel operator.

A. I would say our facilities are probably better than theirs are.

Q. But they are modern facilities, they are wide, and have big truck aisles, and all that sort of thing?

A. That is correct.

Mr. Differding: I think that is all I have. Thank you, Mr. McCarl.

Cross-examination.

By Mr. Vaughan:

Q. Mr. McCarl, what kind or class of commodities do you consider under wharf demurrage at your terminals at Oakland?

A. I still prefer to use the term "storage" instead of "demurrage." That is the way we look upon it. These commodities that move by water, some of them, won't stand additional handling, both in the way of damage to packages and also expense. I think a number of shippers testified at previous hearings before the California Railroad Commission that if these goods were not stored on the [fol. 915] wharf properties, Terminal properties, that they would not move to uptown warehouses for storage.

Q. I don't think you understood my question, Mr. McCarl.

Mr. Vaughan: Would you read it, Mr. Reporter, please?

(The question was read by reporter as above recorded.)

A. The commodities that move in fairly large quantities. We try to make the minimum a carload.

Q. Will you describe some of the commodities?

A. Well, most any commodity that would move by water.

Q. In other words, would it be fair to say that you would store under wharf demurrage rates, or, as you would prefer to call it, wharf storage rates, any and all articles of commerce that move in and out of the Port of Oakland by vessel?

A. Unless the account was one of what we call distribution shipments, where the shipments would be too small to warrant storage in the transit sheds; and we have the option under our tariff of refusing to accept goods for storage unless we consider it advisable to do so.

Q. Wouldn't you say, generally speaking, that you are storing general merchandise at these terminals, as that term is generally known?

A. Well, I think there is a big distinction between the type of goods that are stored at the Port of Oakland facili- [fol. 916] ties and those stored in the warehouses. We have refused a number of accounts, we have even suggested that some of the warehouse operators communicate with these accounts to get them for warehouse storage rather than storage at the terminals.

Q. Mr. McCarl, of the total business handled by you, what percentage have you refused under those circumstances?

A. I wouldn't be able to say definitely because we have a number of solicitors that are contacting the public right along and I would not be in a position to say what is offered and what is not, but the type of storage that we handle is usually what we consider legitimate terminal storage accounts.

Q. It would not be over one-half of one per cent, would it, Mr. McCarl?

A. I say I wouldn't be in position—the only ones I know that we refused are the ones that come to my particular attention.

Q. You employ solicitors, I gather, from your last answer?

A. That is correct.

Q. How many solicitors have you?

A. We have four outside all the time, sometimes five.

Q. Now, do those solicitors solicit business for your terminal upon the basis that they get a lower storage rate there than they would get at a public warehouse?

A. We don't use that as a rule in our solicitation.

[fol. 917] Q. It would all depend upon the length of storage, I think, and upon other conditions?

A. We don't use that as a soliciting factor.

Q. Have you ever used it as a soliciting factor?

A. Do you have in mind now outbound or inbound cargo, water movement?

Q. Either one?

A. I think we have used it in some cases; I think possibly more on inbound than outbound, because as a rule outbound cargo would not go to warehouses for storage.

Q. You have used it, have you not, as a factor of outbound business in connection with large accounts?

A. I don't have occasion to refer to the public warehouse to any extent that I know of.

Q. Have you ever advertised in any of your advertisements that there is an advantage to anyone using the Port of Oakland facilities because they can store there at a lower rate than would accrue at a public warehouse?

Mr. Jones: Mr. Examiner, I fail to see the relevancy of what the Port of Oakland uses as a ground for solicitation of business. Now, if counsel is inquiring whether we are in the warehouse business, possibly we are to a certain extent. We have the charter power to do it, as I understand it, and, as I understand it, the warehouse is not an issue before this Maritime Commission.

[fol. 918] Mr. Vaughan: Yes, but wharf demurrage is, and if, as the record will be developed probably, warehouse demurrage storage is being conducted at less than cost, surely such a practice as I have in mind of soliciting traffic on the advantage to the shipper that he can get goods stored at less than what he would have to pay at a public warehouse, whose rates are presumably just and reasonable, surely that is something that this Commission should take cognizance of and it is within the scope of the border of investigation.

Examiner Basham: I will overrule the objection.

A. On outbound cargo it is so evident that the cost of shipping direct to a terminal and saving the transfer ex-

pense—it is so evident that we don't have to use it in our solicitation. On inbound cargo——

By Mr. Vaughan:

Q. Will you please answer my question?

A. I am answering it.

Q. I asked you about advertising, Mr. McCarl.

A. I don't recall any advertising to that effect.

Q. Well, now, are you storing canned salmon at the present time for the Alaska Pacific Company at any of your terminals?

A. Alaska Salmon Company?

Q. Alaska Pacific Salmon Company.

A. I don't recall that,—probably that is it; Alaska Salmon Company is the one I mean.

[fol. 919] Q. Alaska Salmon Company? It is canned salmon?

A. Yes.

Q. And is it not a fact that you took that away from a public warehouseman on the basis that they would get a lower storage charge at the Port of Oakland facilities than what they were paying at the public warehouse?

Mr. Jones: What has that got to do with this examination?

Mr. Vaughan: May it please your Honor, if in fact the storage rate of the Port of Oakland is non-compensatory, it is quite pertinent to the inquiry. It is an unfair practice for any terminal, public or private, to solicit business on the basis that something less than cost will be offered, whether it is less than cost or free service.

Mr. Jones: There is no showing that it is less than cost.

Mr. Vaughan: Perhaps that will be developed if the Port of Oakland costs can be ascertained, and I trust that before this proceeding is concluded we will have some evidence in the record, despite the refusal of the Port of Oakland to submit it. I don't think this proceeding is by any means over, but I submit that I have the right to develop this, based upon our contention that the Port of Oakland is not charging compensatory demurrage rates, or, as they term them, wharf storage rates.

[fol. 920] Examiner Basham: Objection overruled.

A. We have solicited those salmon accounts for quite a number of years, and we had considerable difficulty in get-

ting any of the business. A number of years ago some salmon was stored at Oakland but more recently it was stored at San Francisco. We had all bid for that tonnage and lost it to San Francisco, to the State Terminal, I understand. The following year we again solicited it, but made no reduction in our rates whatever. We called attention to certain trans-shipment features, and our service and our facilities, and it is my understanding that the shipper was not particularly satisfied with the arrangements and the service which he had obtained at the State Terminal Company, and we then secured the business from our competitor, the State Terminal Company.

By Mr. Vaughan:

Q. Mr. McCarl, do you assess any handling charges in connection with goods which you store under wharf demurrage, or, as you prefer to call it, wharf storage?

A. No, sir, we do not.

Q. And have you ever solicited business under wharf demurrage, or under, as you term it, wharf storage, upon the basis that the shipper will not have to pay handling charges at your facilities, but as he must pay such charges at public warehouses?

A. We quote all of our rates; we do not figure that that [fol. 921] type of movement should be stored in public warehouses. It moves by water and we don't see why it should be transferred away from the terminal to an uptown warehouse and stored and then be transferred and pay charges——

Examiner Basham: Are you answering the question? Read the question. I don't think you understood it.

(Question read by reporter as above recorded.)

The Witness: We don't solicit it, not just that way. We don't call attention to the difference in the handling charges of the warehouses and our facilities.

By Mr. Vaughan:

Q. Mr. McCarl, have you ever solicited business on the basis that at your facilities a handling charge is not required to be paid, whereas such a charge accrues at a public warehouse? Now, can you answer that yes or no, and give any explanation you may please?

A. If you just want yes or no, I will say "No." We don't put it just that way.

Q. Well, have you ever, in connection with solicitation, referred to the fact that handling charges are not paid at your facilities, whereas they must be paid at public warehouses?

A. I don't think that is our real competition, the public warehouse.

Q. Well, have you ever done that now? Will you answer the question?

[fol. 922] A. Not to my knowledge. I will say "No."

Q. How long normally do commodities remain in storage under your wharf demurrage rates, or, as you term them, your wharf storage rates?

A. All the way from one day to possibly in extreme cases several months, possibly a year, if the goods are not sold.

Q. Have you ever allowed goods to be held under those rates for a longer period of time, such as a year and a half?

A. I wouldn't say we have not in the years gone by; not recently, I don't believe.

Q. On what terminal do you store flour?

A. Unfortunately, we don't get much more flour. There is some stored at the Ninth Avenue terminal, handled by McCormick.

Q. How long have lots of flour remained in storage? What is the maximum period of time to your knowledge that lots of flour have remained in storage on your terminal facilities?

A. It is my understanding that the turn-over on what we used to have was about 20 days.

Q. How about beans? How long has a particular lot of beans remained in storage at your facilities?

A. Well, we had one lot, I recall, for a couple of years.

Q. In connection with any storage services performed under your wharf demurrage rates, are receipts issued?

[fol. 923] A. We issue receipts, yes.

Q. Are those in the form of warehouse receipts?

A. We issue both negotiable and non-negotiable warehouse receipts.

Q. And are those receipts used as collateral for bank loans?

A. It is my understanding that they are.

Q. In that connection have you complied with the provisions of the California Uniform Warehouse Receipts Act?

Mr. Jones: Just a moment before you answer that question. There is no requirement in that act that any public body conform to that provision, and these receipts are issued under the authority of the city Charter, Subdivision 9 of Section 212.

Mr. Vaughan: He can answer whether he has or not. That is a legal question.

Mr. Jones: You are asking for a legal conclusion, if he has complied with the State Law.

Mr. Vaughan: I am asking if he has complied. If he says he doesn't, let him answer that. You and I may differ as to whether or not the Uniform Receipts Act does embrace public bodies who are engaged in the warehouse business. May I submit the question?

A. We have our legal department, and we take it for granted it is legal, otherwise that form would not have been approved by the Legal department.

[fol. 924] By Mr. Vaughan:

Q. Then you have not complied? Is that the answer?

Mr. Jones: That is not the answer.

A. I don't know.

By Mr. Vaughan:

Q. Have you been handling any cleaning and scouring compounds for the Hygienic Products Company at any of your warehouses?

A. Not to my knowledge under that name. It is possible.

Q. Do you know whether or not those commodities were diverted from any public warehouses?

A. Not upon our solicitation that I know anything about.

Q. Are you storing any molasses or syrup for Pennick & Ford at any of your terminals?

A. We have stored some, I don't recall whether we have had any recently.

Q. Do you know whether or not that particular account at the time you store it, was diverted from a public warehouse?

A. Not at our solicitation.

Q. Have you stored or are you storing any shortening or cooking oil for the Wesson Oil & Concentrate Sales Company?

A. I recall the name. I know we have handled some of their products. I don't recall whether there are any in storage. I wouldn't be surprised if there were.

Q. Do you know whether or not that business was taken [fol. 925] away from any public warehouse?

A. I don't know.

Q. What would your testimony be with respect to Linden Chicken?

A. The answer would be the same.

Q. Noodles for the Washington Egg & Poultry Association?

A. We have stored some, I know, for that account. They move by water and they don't all move out within ten days so there has been some storage.

Q. What would your testimony be with respect to news print rolls for the Oakland Enquirer?

A. We store a lot of that at times, I wouldn't say so much for the Enquirer, but I know we handle some of their paper.

Q. Do you know whether or not they took that business away from a public warehouse, that is, the storage business?

A. A number of years ago when there might not have been ample terminal facilities the warehouse might have handled it, but I don't know that we took it away from a warehouse. It has been handled at terminals for a number of years.

Q. How about French's mustard and birdseed for the Atlantic Sales Corporation?

A. I don't know. I know we don't solicit those small accounts. If they are storing it is just in conjunction with transit movement.

Q. Do you permit rail cars of Idaho flour to be stored [fol. 926] for consolidation with Northwest flour for inland points or local pickup?

A. We have accepted some few shipments of flour by rail. That practice was started by one of our competitors a number of years ago, and then when we received flour by water for storage it was called to our attention that it was necessary for these shippers to consolidate different brands and qualities of flour in making delivery, and that some of this hard wheat flour that came in by rail should be stored at the same location with the other flour to facilitate delivery to the customers, so we have stored some.

Q. Then the answer is "Yes?"

A. To a limited extent, yes.

Q. Now, at this warehouse C, which I understand is located on your Outer Harbor Terminal——

A. Yes.

Q.—you assess a warehouse charge, do you not, of three cents per square foot per month plus a 60 cents per ton handling charge?

A. We have used that in a few cases. That rate, likewise, was put in to meet competition.

Q. Well, now, what competition have you in mind?

A. With one of the other terminal operators.

Q. Which one?

A. I believe Howard Terminal. I don't know whether [fol. 927] anybody else had it or not, but I know Howard Terminal had it.

Q. In connection with that particular rate and handling charge, that storage rate or handling charge, does that include piling in warehouse C?

A. On inbound water movement that is transferred to the warehouse and includes piling. In the reverse direction we make an extra charge for high piling in conjunction with the car unloading.

Q. When you take it out of warehouse C back to the transit shed, do you assess another 60 cents handling charge?

A. Yes.

Q. But no piling charge?

A. I say, the only piling charge we do assess is in conjunction with the car unloading.

Q. Now, have you made any studies to determine whether or not that warehouse storage charge at warehouse C of 3 cents per square foot a month actually results in lower or higher revenue than if you stored that same cargo at your warehouse demurrage rate of 1½ cents per ton per day?

A. It depends entirely on the length of time it remains in storage.

Q. What studies have you made?

A. It depends on the length of time. I think in general anything over six months at space rental basis would probably be lower than the per day basis.

[fol. 928] Q. Does the 3 cents per square foot rate apply only on the space actually employed? In other words, do you give allowance for aisle space?

A. We add 20 to 25 per cent, it is either 20 or 25 per cent. We use it so seldom it is a little hazy in my mind, but it is one or the other.

Q. Who determines what is to be high piled?

A. The terminal force, as a rule, although the traffic department—they confer with the traffic department as to what the prospects are for tonnage, so as to determine what the space requirements will be.

Q. Doesn't the shipper ever dictate how high it will be piled?

A. He never has anything to do with it except on the space basis.

Q. I am talking about the space basis.

A. The shipper would be interested in the space basis, but I might say that those accounts are very limited, one or two at the most.

Q. Even though limited, when they ask you to pile it at a certain height, don't you usually follow their request?

A. Yes; I would say when goods are stored on the space basis, knowing that they are going to remain in storage for long periods of time, they are high piled.

Q. How high are they piled?

[fol. 929] A. Oh, we pile some, I believe, 22 cases high, which is as high as the lower floor will stand. That is up to the ceiling.

Q. Is there any minimum space requirements under that 3 cents per foot rate?

A. There is, so far as our accepting it is concerned. We would not accept small accounts on that basis.

Q. What is the minimum?

A. We haven't any definite minimum.

Q. Does it vary as to the account?

A. I say, we have one account, so it does not vary much.

Q. Now, let us take an instance of canned goods; what would your charge be, if any, for delivering a lot of canned goods received on wharf demurage, when withdrawn or shipped in quantities of from one to five cases per delivery?

A. Again, if the account is of the peddling nature we refuse to accept it on storage. We might possibly get some account that moved by water before we became aware of the fact that it is what we call a peddling or distribution account. We may have had some of that type of storage, but we don't encourage it, and we don't permit it to continue.

Q. Mr. McCarl, I am not interested and I didn't ask you

about the accounts you did not get. I am talking about the accounts you have on storage. Now, will you please answer my question, having in mind that it is only where you have an account in storage, do you assess that charge for delivery [fol. 930] of the small lots?

A. We assess no charge whatever for partial deliveries.

Q. Now, what would your charge for the same transaction be when the Port of Oakland is required to prepare a bill of lading to effect the shipment?

A. It is in very exceptional cases that we prepare the bills of lading. We have the bills of lading prepared by the transportation companies.

Q. Now, when you do prepare it, Mr. McCarl, do you assess the charge?

A. Well, I think it would be safe to say we do not prepare them.

Mr. Scoll: Do you want to ask him further about that?

Mr. Vaughan: I do, but go ahead.

Mr. Scoll: I just wondered if you were through.

Mr. Vaughan: I am not sure that I understand his answer.

By Mr. Vaughan:

Q. Have you and do you prepare bills of lading?

A. If we prepare any there is no charge. There is no provision for any charge and there wouldn't be any charge.

Mr. Vaughan: Did you want to ask a question on that?

Mr. Scoll: No, I just wanted to have him clarify his [fol. 931] answer.

By Mr. Vaughan:

Q. Do you ever advise a storer of a withdrawal of merchandise from wharf storage?

A. Yes.

Q. Do you make a charge for that?

A. No.

Q. Do you ever effect any C.O.D. collections for your storers when they request you to do so, and if so what charge do you make for that service?

A. Oh, we have in the past made some collections. I think we instructed our terminal superintendents to refuse that type of business. I don't know of any now that we have that we make any collections for.

Q. Did you ever make any charge for it?

A. No charge; therefore we refused to handle it.

Q. Now, if a quantity of merchandise is stored under wharf demurrage under which the inbound carrier's billing shows no segregation as to sizes, brands, grades, or varieties—that is, we will say paper bags, for example—will you accept storer's delivery instructions for one or more sizes, brands, grades, or varieties without making a charge?

A. Goods are supposed to be segregated at the time of discharge from the vessel and there is no charge assessed. We don't have much of that service to perform. They are [fol. 932] segregated at the time of placing on the dock.

Q. Yes. You may not have much, but when you do, you do not make any charge, is that true?

A. If there is any service performed of that kind there is no charge.

Q. If merchandise is received in the transit sheds from a vessel without prior knowledge of storage requirements, and the owner will declare an intention to permit the goods to remain on wharf demurrage for a considerable period of time, is it your practice to remove the goods from the transit shed to a less congested area in your facilities?

A. All we have is the transit shed on inbound cargo. There is no place to move it.

Q. How about some of these back warehouses?

A. On inbound cargo we have no back warehouses, except the pineapple which I have always mentioned as an exception.

Q. If a storer maintains a large variety of merchandise on wharf demurrage, that is, we will take again paper bags, various sizes of paper bags of different grades and sizes of wrapping paper, do you maintain a record of receipts and deliveries by the individual items?

A. We maintain a record of receipts and deliveries. I presume that is by varieties if it is required by the owner. I don't know about that detail, whether it is required.

Q. Well, have you——

A. We keep whatever is necessary to make deliveries and [fol. 933] to give the information that the owner requires.

Q. How accurately do you keep those records of deliveries, Mr. McCarl?

A. We keep whatever is required, and if it is too much of a detail we refuse to handle any other shipments.

Q. Do you know of any instance where your records did not show a withdrawal and it turned out that there had been a withdrawal, and in such instances have you assumed liability for the loss?

A. I handle all the claims and I don't know of any liability for any such loss. We never paid any claims.

Q. Mr. McCarl, I am not quite sure that I understand your testimony, particularly where in several instances you have referred to the willingness of the Port of Oakland to cooperate in connection with the level of wharf demurrage rates. Is it true that the Port of Oakland, through yourself, has in the past initiated conferences among your competitors for the purpose of trying to reach a satisfactory agreement as to the level of the wharf demurrage rates?

A. We have initiated conferences in connection with all terminal rates.

Q. Well, at those conferences have you indicated as the position of the Board of Oakland that you would be willing to increase the wharf demurrage rates?

A. Where it appeared to be in order, yes, we have ex- [fol. 934] pressed the willingness if the rest do.

Q. As a matter of fact, based upon your experience in the past five or six years in connection with this wharf demurrage problem, don't you recognize that one of the chief sources of chaos existing among the terminals as to their competition is because of the feeling that wharf demurrage rates are too low?

A. You say chaotic conditions amongst the terminal companies?

Q. And the public and the warehouse men. We will throw them all in.

A. Well, I will have to say again that I think in general we are not particularly competitive with the warehouses. It is a different type of storage.

Q. Then leave them out, if you can answer my question without the warehousemen.

A. I don't think there is any chaotic condition amongst the terminal operators who have sat down and discussed the matters of rates for the various services. We did have tariffs on file and the rates are stabilized and we are not responsible for unreasonably low rates if they are low.

Q. If it were the desire of all other terminal companies to cooperate and enter into an agreement whereby wharf

demurrage rates would be increased, do you believe that the Port of Oakland would go along with those operators?

Examiner Basham: I don't see the relevancy of those [fol. 935] questions, Mr. Vaughan.

Mr. Vaughan: Very well, your Honor.

By Mr. Vaughan:

Q. You stated that you had given no consideration to the cost of wharf demurrage, Mr. McCarl?

A. We have never made any study as to the cost.

Q. I draw attention to the statement that you made when you read your letter of March 23, 1936 to Dr. Edwards as follows:

> "Should the goods remain on the space on which they have been placed for transit movement, one, two, three or four days beyond the free time period, there is no additional labor expense whatever as the space is generally not actually required for the handling of new cargo."

Now, in connection with that conclusion, is that based upon surmise on your part, or upon some study that you have made?

A. From actual conditions over a period of some 25 or 30 years I have drawn that conclusion.

Mr. Vaughan: That is all.

Mr. Townsend: I have some questions I want to ask.

By Mr. Townsend:

Q. Mr. McCarl, I want to follow up, if I may, this question of your competition in connection with storage on the wharf. [fol. 936] I believe you just stated a moment ago that in your opinion your competition was not so much with the public warehouses. Now, you have also referred to the storage of salmon, and let us start with the storage of salmon. Isn't it true that salmon is sometimes stored in vessels that are anchored in the estuary or San Francisco Bay?

A. Yes, that is true.

Q. Can you describe the nature of that particular storage?

A. Well, I believe there are at least three salmon concerns that do business in the bay area that have stored salmon in the vessels tied up at different points in the bay

district, either in the estuary or in the bay, and the goods are held in the ship until it is necessary to unload them.

Q. Well, now, who is owning and operating those vessels in connection with the salmon storage?

A. The owners of the salmon.

Q. Is there in effect not field warehousing being practiced on board those boats with the issuance of warehouse receipts, and so forth?

A. I am not sure as to that. It has not come to my attention.

Q. In connection with the storage of salmon on your docks, are you competing with those vessels to which you have referred?

[fol. 937] A. Well, we don't try to meet that type of competition. They have the vessels, and just what it costs them to hold the salmon in storage in the vessels must be a very small expense. We figure that our competition begins when they decide to unload the salmon.

Q. Referring now to other commodities, what do you consider to be your real competition in connection with storage on your docks?

A. The competition is with the other terminal operators, with interior warehouses to some extent, with facilities at the points of production, at the plants, and also facilities at the points of shipment, having in mind coastwise traffic in that connection.

Q. Is it not a fact that the owner of any goods who is looking for space in which to store them will investigate the entire situation and take the cheapest storage that he can find that will suit his needs?

A. Yes; I believe he will also consider climatic conditions sometimes. There are a number of items that enter into the competitive factor. The cost is the principal factor, I believe.

Q. Have you ever found that the owner of goods seeking storage space may even investigate the possibility of leasing a vacant building in Oakland and storing in such vacant building?

[fol. 938] A. We have had one of our large lessees, in part, that is, utilize that type of storage in preference to our space rental basis and also the wharf storage rate.

Q. Would you say that you are really in competition with storage space of that type?

A. We don't particularly try to meet that type of competition, but that has cost us considerable tonnage.

Q. Have you ever found that the owner of the goods, if he considers that your wharf demurrage rates are too high, may erect his own building for storage purposes?

A. Yes, that was forcibly brought to our attention too by another of our large lessees.

Q. So, summarizing briefly, would you say that in addition to public warehousing at various points, whether it is the country or origin or destination, and the other competing terminals, you must also take into consideration what we might call proprietary warehousing, that is, owned by an individual?

A. Yes.

Q. Would the Port of Oakland accept for wharf demurrage on its docks canned goods that are still in the cans and not labeled or in cases?

A. No, we would not.

Q. Why not?

A. We don't consider that proper terminal storage.

Q. Why?

[fol. 939] A. The question of pilferage enters into it. It just doesn't lend itself to transit shed storage.

Q. And as far as the Port of Oakland is concerned, that could only go in special leased areas?

A. Yes.

Q. Does the Port of Oakland ever have an occasion when a vessel engaged in trade between the Pacific Coast and Europe has been scheduled to call at Oakland but fails to call there?

A. Scheduled to call at Oakland and fails to call?

Q. Yes.

A. There have been instances, yes.

Mr. Graham: What do you mean by that, scheduled by the carrier, or scheduled by the Port of Oakland?

Mr. Townsend: Let me develop it a little more fully and I think it will be clear.

By Mr. Townsend:

Q. What I have in mind is this, Mr. McCarl: Doesn't it sometimes happen that the Port of Oakland has solicited cargo for a particular vessel in the European trade, and

that vessel fails to call at Oakland and the goods remain on the dock at the Port of Oakland?

A. Generally there is one call made in the East Bay area, although it might be possible that they do not call in the East Bay area at all. But we have had a number of in- [fol. 940] stances where we have solicited cargo for a particular vessel, guaranteeing a 150 ton minimum for the calling of that vessel, and we have not had that minimum and the vessel did not call.

Q. But you have had some cargo on your docks for that vessel?

A. Yes.

Q. In those instances where the European vessel has not called at your dock, what has been done with the cargo on your dock intended for that vessel?

A. We have transferred it to another East Bay terminal or to San Francisco.

Q. What method of transportation is used in making that transfer?

A. Truck in so far as the other East Bay Terminals are concerned, and by barge to San Francisco.

Q. Who pays the charge in connection with that transfer?

A. If we don't have a 150 ton minimum the Port of Oakland pays it. That situation likewise pertains to the other terminal operators.

Q. Isn't that situation the same if the vessel fails to call at Oakland, regardless of the amount of tonnage that you have?

A. If we have our minimum and there is any transfer, then it is for the account of the carrier.

Q. The carrier pays the transfer charges?

A. Yes.

[fol. 941] Q. Doesn't the Pacific Coast European Conference tariff provide that the European carriers will not absorb any transshipment costs?

A. I understand that for certain operating conveniences of the vessel permission is granted to do that. It is not done to any great extent. They pretty nearly always call the vessel.

Q. You say permission is granted. By whom is permission granted?

A. I presume the conference. I wouldn't say definitely as to that. I know there have been over a number of years some transfers that we have not paid for.

Mr. Scoll: Mr. Townsend, how is this relevant to the wharf demurrage issue, may I ask?

Mr. Townsend: I don't understand that we are limited in this proceeding to talking about wharf demurrage. I want to ask this witness some questions about his operations. I understand Mr. Differding has gone down the line on it.

Mr. Graham: Haven't you started it when you asked him about the practices of the European carriers?

Mr. Townsend: I will ask another question.

By Mr. Townsend:

Q. Mr. McCarl, is there a provision in the tariff of the Port of Oakland which provides for the absorption by the [fol. 942] Port of Oakland of barging or trucking transportation costs for transferring this cargo of a European vessel which fails to call at the Port of Oakland?

A. We, like the other terminal operators, have considered that an operating absorption. It is our inability to obtain sufficient tonnage to make the minimum, and therefore the shippers cannot be assessed the charge and we consider that an operating matter, in that we have to, in such instances, get the cargo to the vessel.

Q. What is the answer to my question?

A. There is nothing in the tariff. We don't consider it — it is an operating expense.

Q. Now, let us refer for a moment to cargo which is outbound from the Port of Oakland to an intercoastal destination and which is transshipped from the Port of Oakland to San Francisco and there put aboard an ocean-going vessel. What toll is assessed by the Port of Oakland?

A. The intercoastal toll at the present time. The old practice was to assess an inland waterways toll, figuring that it was an inland waterway movement. That practice obtained for quite a number of years, but at the present time we are assessing the intercoastal toll.

Q. When was the change in practice made?

A. When the increased tolls went into effect. That was the first change in the toll item since the Port of Oakland [fol. 943] operated its facilities, and the matter had been discussed a number of times, and this was the opportunity

to put it into effect, and I, for one, practically insisted upon it being interpreted that way, and since that time we are all assessing the intercoastal toll.

Q. And that change was made in December, 1939, was it?

A. Yes, December 1, 1939.

Q. At the present time, then, as I understand it, in the case of this trans-shipped cargo, the Port of Oakland would assess the intercoastal toll, which is 25 cents, is it?

A. Right.

Q. Then the Port of San Francisco would also assess a toll, would it not, for the trans-shipment over the dock?

A. Yes.

Q. And is it your understanding that that would also pay the 25 cents?

A. That is my understanding, yes.

Q. Now, is it also your understanding that one of these toll charges of 25 cents is assessed against the cargo and the other is paid by the steamship company?

A. That is correct.

Q. Formerly the practice was that the tolls the Port of Oakland assessed for passing over its dock was the inland waterways toll of 5 cents a ton, and at San Francisco the intercoastal toll of 15 cents a ton was charged? Was that [fol. 944] then your understanding?

A. That is my understanding.

Q. Then was it also your understanding that formerly the cargo was charged 15 cents and the steamship company was only required to pay the 5 cent toll?

A. That is my understanding, yes.

Q. Does the Port of Oakland handle pool cars for water movement?

A. We do not.

Q. Why not?

A. We don't figure that that is proper terminal service, particularly in so far as the Port of Oakland is concerned. That is our view in the matter.

Q. You are just not interested in handling them?

A. No.

Q. Does the Port of Oakland handle consolidated cars moving by water and by that I mean a car having more than one consignor and one consignee?

A. Not to my knowledge. I think it is just one in each case.

Q. Does the Port of Oakland handle consolidated or pool rail cars?

A. I don't know just what would be the proper term for the type of cars that we handle. For instance, that is, the owner of the Pineapple stored at the terminal, will accept [fol. 945] consignments from other shippers to go into that car and we will receive them and perform the car loading, and the car goes forward under a bill of lading with one shipper. But we don't arrange for the consolidation, we simply load the goods into the car. We do, in the case of such type of traffic, assess what we call a freight transfer service charge on the goods that we receive and on which no water movement is involved.

Q. I am not sure whether you have explained what the interpretation of the Port of Oakland is with respect to that provision of the tariff concerning what we might call a waiver of wharf demurrage charges in connection with a delayed vessel. Have you discussed that?

Mr. Jones: I think it is quite complete in the record.
Mr. Differding: I went into that question completely.
Mr. Townsend: I was not sure.

By Mr. Townsend:

Q. Now will you consider for a moment the matter of the service charges at the Port of Oakland? There are different service charges for different things, are there not?

A. Yes.

Q. Now, how do you justify the difference in the charges in the different trades?

[fol. 946] Those charges have been built up over a period of years, I think probably based more on what the traffic will bear than on any other process, although the Railroad Commission made a cost study as per these exhibits which have been offered, I think back in 1935-1936, a study was made, and some adjustments were made based upon those cost studies.

Q. Is there any real difference in the service that is performed, for example, on outbound shipments in the different trades?

A. I don't think there is any particular difference. It may be that they move larger quantities in some trade routes than others.

Q. Would your answer be the same with respect to the inbound shipments in the different trades?

Mr. Jones: Mr. Examiner, are we going to go through the Oakland tariff item by item? In other words, it looks to me as though this is becoming now a fishing expedition for information that does not seem to have very much relevancy. If you have some point that you are leading up to, Mr. Townsend, I would be willing to consider it, but it is getting late and the hearing has gone on long enough anyway.

Mr. Townsend: Mr. Jones, I am simply trying to assist the Maritime Commission in developing the practices they are inquiring into.

Q. Let me ask another question. Was there an objection?

[fol. 947] Mr. Jones: There was an objection.

Mr. Townsend: I will submit the objection.

Examiner Basham: I am in sympathy with the objector but I will overrule him.

A. I think there is a little different situation on the inbound foreign shipments. They usually come in in larger quantities. I don't believe there is as much detail on deliveries as there is in the Intercoastal and coastwise traffic.

By Mr. Townsend:

Q. At what points under the jurisdiction of the Port of Oakland is inbound lumber discharged?

A. Principally at Ninth Avenue Terminal, Livingston and Dennison Street Piers; to some extent at the Outer Harbor Terminal; a small quantity at the Grove Street Terminal; and also at certain leased facilities at lumber companies.

Q. Is wharf demurrage charged on that lumber by the Port of Oakland at each of those facilities that you have mentioned?

A. When lumber remains on hand over the free time period the storage charge is assessed.

Q. And that is true with respect to all those facilities, including the leased area?

A. The only one that is questionable in my mind is the one of the Hogan Lumber Company.

[fol. 948] Mr. Jones: That is entirely private.

The Witness: That is entirely private. I would say in general, yes.

By Mr. Townsend:

Q. Well, now, do you mean that you charge wharf demurrage at all the wharf facilities except the one you mentioned?

A. That is a private facility so it would not come under our direction.

Mr. Jones: I think I can straighten that out.

Mr. Townsend: All right.

Mr. Jones: Those facilities which are leased to private businesses we do not charge any demurrage. After all, they are paying us rent for the facility. We do, at the docks.

By Mr. Townsend:

Q. As I understand it, then, at Ninth Avenue Dock, Outer Harbor, Grove Street Terminal, and at Livingston and whatever it was—you do charge wharf demurrage on lumber held beyond the free time?

A. Yes, at all the facilities operated by the Port of Oakland, and that includes lumber for the Coos Bay Lumber Company and for Hill & Morton. Any lumber that moves over the facilities which are operated directly by the Port is assessed the storage charges in accordance with the port's tariff.

Q. Where is the lumber of the Coos Bay Lumber Company discharged?

[fol. 949] A. Ninth Avenue Terminal.

Q. And they pay wharfage demurrage on that when it is held beyond the free time?

A. They do.

Q. To the Port of Oakland?

A. Yes.

Q. Is that the regular charge in your tariff?

A. The regular rate to everybody.

Q. Is any lumber stored in Oakland areas of the Port of Oakland?

A. Yes, any lumber that is stored is in the Oakland areas.

Q. You do not store it in the transit sheds?

A. No.

Q. And this wharf demurrage charge to which you were just referring is applied in those open areas?

A. That is correct, and that is a high charge, too, by the way.

Q. Is any of that lumber that is discharged at any of those facilities that you have enumerated sent back after it is first placed on the dock?

A. At the Ninth Avenue Terminal, yes.

Q. Is a charge made for that service?

A. Yes.

Q. And is that service performed by the Port of Oakland? [fol. 950] A. Yes, except in the case of the Coos Bay Lumber Company. They bring in full cargo lots and remove their lumber to their leased area with their own carriers. That same privilege would be extended to any other lessees.

Q. In other words, anyone who had his own lumber carrier would be permitted to set back the lumber and would not pay a charge therefor to the Port of Oakland?

A. That is right. However, the Coos Bay Lumber Company is the only one that is doing that for its own account. It is not practical in the case of small shipments.

Q. Does the Port of Oakland store any other commodities in addition to lumber in the Oakland areas?

A. Yes, some commodities.

Q. What are they?

A. Pipe, scrap iron—those are the principal commodities that I recall right off hand.

Q. Are those commodities stored in the open areas on a wharf demurrage charge?

A. Yes.

Q. And that is the regular tariff charge?

A. Correct.

Q. Does the Port of Oakland allow any other persons to perform service on its docks?

A. It will permit owners or their representatives, if they so desire, to perform accessorial service, including [fol. 951] marking, strapping, weighing, and labeling.

Q. Car loading or unloading?

A. No car loading or unloading. We consider that a major service and not an accessorial service.

Q. Does the Port of Oakland make a charge to the users of space for performing these services that you have mentioned?

A. We do not; none of the Terminal operators do. That is something that is under consideration by the company.

Q. And you make no charge, then, either for use of space by those people or anything in the nature of a service charge?

A. No.

Q. Now, why is no charge made?

A. Well, that is a practice that was built up before the Port of Oakland started operating, and we simply followed the practice that was established. It has never been changed. In San Francisco they even permit proper parties to perform the car loading and car unloading services.

Q. Without any charge being made?

A. Without any charge.

Q. Now, let us consider for a moment the situation of Libby, McNeil & Libby and Rosenberg Brothers. As I understand it, they have facilities that are leased to them behind the transit shed, is that correct?

A. That is correct.

[fol. 952] Q. And cargo moving to and from those leased services over the docks is first, if it is outbound, transferred from those leased facilities to the dock and there placed on a pile on the dock, is that right?

A. It either comes direct from the other plants, or if it is placed in those leased facilities the goods are transferred by the shipper or their agents to the transit sheds where we receive them.

Q. What method of transportation is used in making that transfer from the leased warehouse to the transit shed?

A. A small tractor and trailer.

Q. What type of facility is crossed between the leased area and the transit shed? Is that part of the Port of Oakland facility?

A. It is a paved area belonging to the Port of Oakland.

Q. Roadway area?

A. Roadway area.

Q. That is done either by the shipper directly or by some agent of the shipper?

A. That is correct.

Q. When you say "agent," you mean someone who contracts with them to perform that?

A. That is correct.

Q. Does the Port of Oakland receive any revenue in connection with that transfer?

[fol. 953] A. No, we perform no service and receive no revenue.

Q. What was the charge of 60 cents a ton that you referred to as a handling charge in your previous testimony?

A. That is a transfer charge between Terminal Building C which is not a leased facility, and the transfer shed, when the transfer service is performed by the Port of Oakland in connection with goods stored in Terminal Building C on a space rental basis.

Q. Now, just one or two more questions: You referred to the handling of flour over the docks of the Port of Oakland, and I believe you referred to the fact that the one thing you would rather have to consider in connection with your storage charge on flour is the all-rail competition between the northwest and California, is that correct?

A. Yes, I understand that is very bitter competition.

Q. Is it not a fact that the railroads reduced the rates from the northwest to San Joaquin valley not long ago?

A. That is my understanding, that they did.

Q. Did you find that that caused any loss in the flour business to the Port of Oakland?

A. We didn't have a great deal right about that time, but that has diminished to practically nothing now, so I would attribute the loss probably to that reduction.

Q. And is the level of the rail rates from the northwest to California a factor that must be considered in determin-
[fol. 954] ing the storage charges on flour, in your opinion?

A. Yes, it must.

Q. Are there any other commodities which you can enumerate where you have similar railroad competition?

A. Oh, I think that exists in the case of most commodities that move coastwise at the present time. The traffic moving by water in the coastwise trade has diminished to a very great extent in recent years. It has been lost to land carriers, so that I think we have to consider that land competition with the water transportation—we have to consider all the terminal charges in determining whether or not the goods will move by water or move over the terminals.

Q. Is that competition particularly noticeable in the case of lumber?

A. Yes.

Mr. Townsend: That is all, thank you.

Mr. Vaughan: I would like to ask one question that has been suggested by Mr. Townsend's examination.

By Mr. Vaughan:

Q. Mr. McCarl, in connection with that transfer from Libby, McNeil & Libby and Rosenberg Brothers storage space to the dock, you stated it was performed by the storer or the storer's agent?

A. Yes.

Q. Now, isn't it true that at a building adjacent to that [fol. 955] occupied by Rosenberg Brothers and Libby, McNeil & Libby, there is a storer of beans?

A. Yes.

Q. And that storer of beans occupies that space under a term rental basis, does he not?

A. Month to month basis.

Q. Month to month?

A. Yes.

Q. And he is not storing those beans under your wharf demurrage rates, or, as you term it, your wharf storage rates?

A. They are in his custody. He accepts them and cleans them and while they are in his custody he pays us for the space occupied and he assesses a charge of his own against the owner.

Q. And he does not pay either your 3 cents per square foot charge or your 1¼ cents per ton, does he?

A. He pays us the 3 cents charge which is named in the tariff.

Q. Oh, he does pay it?

A. Oh, yes.

Q. He doesn't pay a monthly rental?

A. He pays this 3 cents per ton per month. That is his monthly charge.

Mr. Vaughan: I see. Thank you.

Mr. Graham: Mr. Examiner, I have some questions of this witness, but in view of the fact that by my watch it is [fols. 956-961] four minutes of ten, I make a motion we adjourn for the evening.

Examiner Basham: We will now adjourn until 9:30 o'clock in the morning.

(Whereupon at 10:00 p. m. the hearing was recessed until February 20, 1940, at 9:30 a. m.)

[fol. 962] M. D. McCarl resumed the stand and further testified as follows:

Cross-examination (Continued).

Examiner Basham: Do you have some questions, Mr. Graham?

Mr. Graham: Yes, sir.

By Mr. Graham:

Q. Mr. McCarl, in connection with changes that you contemplate, or may desire to make in your tariff, as I understand it, these can be made without any delay and without any prior notice as compared to the obligation of the private terminals in compliance with the Order of the California Railroad Commission. That is a fact, is it not?

A. Our changes are made by ordinance of the Board of Port Commissioners requiring two readings to become effective. The Board meets on Monday of each week, so that requires at least a week, and those are published in the official publication of the City and have to be published twice, I understand. I think there are five days between each publication.

Q. Is it not a fact that you can make tariff changes, as you testified yesterday, on occasion with only one reading, without the necessity for this delay that you have suggested?

[fol. 963] A. It's questionable whether or not that is really effective. We have in order to make our rates effective with the private terminal operators where they have received short notice. I don't believe there has been more than one or two cases during the 14 years when that has been used.

Q. But you have done it?

A. It has been.

Q. And that means change of tariff provisions within the day, then?

A. Yes.

Q. What publication do you get on these changes? Daily paper publication?

A. Daily paper publication, yes.

Q. And there is no opportunity for any objector to any change to bring that matter before any regulatory body?

A. No.

Q. Except the Maritime Commission should it find in this case?

A. That's correct.

Q. What is your situation in respect to the extension of free time in the case of a delay of the vessel? Is that solely within the discretion of the Port Manager? I think that is covered by Item 35 (d) Exception 2.

A. The application is uniform in all cases. I believe probably we have been a little stricter, if there is any strict- [fol. 964] ness in the limitation of that during the recent War period. I recall at the meeting with the other operators we decided that the terminals should not carry the load in case vessels do not load as scheduled; other vessels might be subject to delay, and so forth, and that either the shipper or the steamship company should be billed in such cases. I know I had an inquiry and advised the shipper that we couldn't protect him any unlimited length of time if the vessel failed to call. One of our vessels received the tonnage.

Q. It was all outbound tonnage?

A. Outbound tonnage.

Q. Your rule provides that the Port Manager may extend the free time such numbers of days as in his judgment is warranted and equitable in each individual case. As a result of that rule it is a fact, is it not, that there is no uniformity at all in respect to the extension of free time owing to emergencies or failure of the vessel to arrive?

A. It all depends upon the time that——

Q. (Interrupting:) Just answer the question. There is no uniformity, is there?

A. If all the vessels were delayed the same length of time, there would be uniformity.

Q. No, no. My point is this: That under such a rule [fol. 965] where free time may be extended by the Port Manager in his own judgment, there is no uniformity at all provided by the rule? Let us put it that way.

A. I would say that that is correct.

Q. So that if the Port Manager in his judgment decided to find as to one cargo owner and not as to another, he could do that under the rule?

A. That would be possible, yes.

Q. Yes. Does this rule apply only to outbound cargo or does it apply equally to inbound cargo?

A. Outbound cargo.

Q. Only?

A. I can't think of any instance offhand where it would apply to inbound cargo.

Q. Do you have any rule in respect to inbound cargo where it remains on your dock beyond the free time and where that free time is extended in the judgment of the Port Manager?

A. No.

Q. In other words, you have no extension of free time on inbound cargo?

A. That's correct.

Q. As to outbound cargo, this rule refers to a delay of the vessel due to stress of weather, accidents, and in cases of breakdowns or other emergencies. Are those all condi-[fol. 966] tions which relate to the operation of the vessel itself or which have caused the delay?

A. Yes, except considering strikes as an emergency.

Q. That is what I was going to ask you. Would you consider under this rule that strike conditions were such an emergency as would permit the Port Manager in his judgment to extend the free time on outbound cargo?

A. Together with the private terminal operators we have interpreted it that way.

Q. So that it has been the practice of your terminal to extend in the Port Manager's judgment, the free time which has been necessitated as a result of strike?

A. That's correct.

Q. What would you say in a case like this: Where a vessel is scheduled to load at a terminal; has cargo on the terminal, and at the close of the day's work finds that it has a small block of cargo left to load, but that the longshoremen refuse to load because they have reached the maximum man-hours of work and the ship is confronted with the problem of either staying over a whole day to load that small block of cargo or leaves with the cargo still left on the dock and unloaded? What would you do in that kind of a case?

A. The computation ceases when the vessel starts to load. In other words, the——

[fol. 967] Q. (Interrupting:) In other words, free time?

A. It's considered as having been delivered to the vessel when the vessel starts to load.

Q. In spite of the fact that it may have loaded a particular block of cargo?

A. Provided the cargo does go on that vessel.

Q. All right. The case I am citing to you is a case in which the cargo does not, in fact, go on the vessel at all. Do you understand the situation I am trying to portray?

A. Would that be shut-out cargo?

Q. That would be shut-out cargo.

A. In that case storage charges would be in order.

Q. Against whom?

A. I would say it would be against the steamship company.

Q. Have you ever had that occasion arise?

A. No, we haven't.

Q. You don't know that last week two of the vessels of the Luckenbach line had that very occasion happen to them, of leaving cargo on the dock in preference to holding the two vessels over for another working day, because of the fact that they could not load the cargo on account of the stevedore's refusal, they having already worked their man-hours on the job?

A. I don't recall that occurrence at our facilities. It wasn't brought to my attention.

Q. Have you ever had that occur at your facility?

A. Not to my knowledge.

Q. Take a case where the ship has actually started to load. As I understand you, the free time stops then?

A. Yes.

Q. You consider that the running of the period?

A. That's correct.

Q. And during the loading there is a strike of short duration, and the ship, not wanting to wait out the strike, leaves the port and leaves some of their cargo on your dock. What do you do in that kind of a case?

A. It usually happens that the vessels load at other facilities about the bay district after they leave our facility and some cargo has been transferred.

Q. At your expense?

A. Oh, no.

Q. At the ship's expense?

A. At the ship's expense.

Q. Let us take the case of where the cargo is not transferred at all and the ship leaves and you have the cargo until the termination of the strike. That has occurred?

A. I don't recall it just that way, until the termination of the strike. If that were outbound cargo and after the termination of the strike it were loaded to another vessel, I believe we would consider that that was an emergency, [fol. 969] provided it was loaded to another vessel at the termination of the strike.

Q. That is right. I am assuming that it would be, yes. In which case during that period you would extend the free time even though your computation of free time had terminated prior?

A. Yes, I think we would.

Q. So that what this rule really means is that in any case where in the judgment of the Port Manager free time should be extended or, let us say, wharf demurrage should not be collected, it is waived?

A. We have that——

Q. (Interrupting) Let us answer that question first and then explain it. That is a fact, is it not?

A. I would say, No. If you just want a yes-or-no answer, I would say, No. But I could answer the other way with qualification.

Q. All right. Go ahead, then.

A. While the tariff item says, "In the judgment of the Port Manager," we would confer with the other terminal operators before making decision.

Q. As to whether they agreed with you or not?

A. That's correct. I think it has always been the uniform interpretation in so far as the application is concerned.

Q. Do all the terminals have the rule in exactly the same [fol. 970] phraseology that you have it?

A. Theirs is more definite on file with the Commission. I might say that when we made up our tariff quite a number of years ago those particular items have not been changed and there is some expense involved in making changes, having to print the changes in the official publications. And knowing that there would apt to be a number of changes after the tariff was first published, we made those broad enough to eliminate that expense; if for no other

purpose. There is no intention of having any advantage over the competitors.

Q. Has the California Railroad Commission laid down a rule to cover this situation of extension of free time for the private terminals?

A. I don't know as they have laid down any rule. The tariff item speaks for itself, I believe.

Q. And this item of yours is different than the private terminals' tariff item?

A. It is worded differently, yes.

Q. But, as I understand you, you attempt to conform to the same practice?

A. We do conform to the same practice.

Q. Let me ask you again. Isn't it a fact that the ultimate effect of this rule is to permit the extension of free time, or, let me say, the waiver of demurrage when in the judg-
[fol. 971] ment of the Port Manager it is warranted?

A. That's the purpose of it.

Q. And that is the actual effect of it?

Mr. Jones: Mr. Examiner, I think this rule speaks for itself and this question merely calls for the conclusion of the witness as to the legal effect of the rule.

Mr. Graham: Oh, no, no. It doesn't at all.

Mr. Jones: The question as framed and put to the witness does not correspond to the limitations that he has placed upon it and the interpretations of it in practice.

Mr. Graham: That is what I am trying to bring out in this questioning. As far as I am able to find out in the various examples which I have cited to this witness, there isn't any limitation to the rule and I don't think there is.

The Witness: On the application.

By Mr. Graham:

Q. On the application of the rule there is really no limitation except that the time may be extended, which means that the demurrage may be waived in the judgment of the Port Manager, and I am not criticising the rule, understand. I am just asking you if that is not the practical effect of it.

[fol. 972] A. It is so worded that it can be applied that way.

Q. Yes. Mr. McCarl, you have heard discussed the subject of penalty demurrage. You heard Mr. West's testimony here the other day?

A. I did.

Q. Are you not in accord with the principle of demurrage on a penalty basis?

A. Not entirely, no. I think it depends very largely on conditions. I don't see how a new port, just having constructed a number of facilities, would be justified in driving business off of their facilities in all cases during the free time period and shutting themselves out of revenues which might be obtained from reasonable storage rates.

Q. So your interpretation of "demurrage" really amounts to, rather than an attempt to hasten the movement of the goods, a fixation of a rate which should properly be called "storage"?

A. I think so. And in so far as the Port of Oakland is concerned, we have tried to co-operate with the other terminal operators in arriving at what we consider a reasonable rate.

Q. Is it not a fact that the actual result of your structure in respect to what you call "demurrage," is that you have no penalty charge which forces the removal of the cargo from the dock, and that what you actually have is a charge [fol. 973] for storage?

A. That's correct.

Q. Do I understand that it is your opinion that at the present time the Port of Oakland dock facilities are still pioneering in the development of their trade?

A. I would say so, yes.

Q. Is it not a fact that rather than pioneering the facilities are over-built and that that gives you sufficient space to permit of storage on facilities which, if fully occupied, would be required for transit business?

A. I wouldn't say "over-built." I would say we are under-built, if anything.

Q. Well, it is a fact, is it not, that in these transit facilities that you have sufficient space available at most, or all times, to permit rather long term storage?

A. We think that is one of the functions of the terminal operations.

Q. Now, listen! I know that.

Examiner Basham: Answer the question.

By Mr. Graham:

Q. That is the fact, is it not?

A. We can accom-odate storage.

Mr. Graham: Will you read that question? I think if you will stick to these answers we will get along a little faster. [fol. 974] May I have that question read?

(The question referred to was read by the reporter as above recorded.)

The Witness: Most of the time.

By Mr. Graham:

Q. And those facilities are not comparable to your competitor dock operators for the most part?

A. In what way "not comparable"?

Q. Whose facilities are more or less limited to transit shed facilities? Don't you think that that is a fact?

A. I would say they are quite comparable in some of our competitors and not comparable to some others.

Q. And not comparable to others, that is right. Isn't the answer to your determination to have the storage rates based upon the fact that your transit sheds are of such size and scope that this scheme fits in best to your operations?

A. That is correct.

Q. And this space that you use for storage purposes is, in fact, shipside space?

A. Yes.

Q. Do you have actual storage space distinctly from shipside space in which you store goods on a storage basis at a different rate than prevailing on the shipside facilities?

A. Only at Terminal Building C.

Q. And what is the situation again with respect to Ter- [fol. 975] minal Building C?

A. That is used for overflow cargo or for cargo that is to remain for long-time periods that they don't want to put in the transit sheds at the Outer Harbor Terminal. We have nothing but the transit shed. There is at the other terminal facilities.

Q. And then you have your leased facilities which are in a different category?

A. Yes.

Q. As to Terminal Building C, will you again tell us what your charges are on cargo placed in C?

A. Either at the daily basis, the same as a place in the transit shed, or in a few cases on a square foot basis.

Q. And who determines on which basis the cargo is to remain in C?

A. The management determines that.

Q. And——

A. (Interrupting) The management determines that. It depends, of course, on the wishes of the shipper. The shipper would first have to make request for the square foot basis before it would be even considered.

Q. I see. And you determine in your own judgment whether you will give it to him or not?

A. That's correct.

Q. At what point does a greater revenue accrue to you on [fol. 976] a per foot basis in respect to the length of time that the goods will remain there?

A. I haven't made a definite computation of that. We used the square foot basis so seldom. It would have to remain quite a length of time before the square foot basis would be attractive, from the shipper's standpoint.

Q. Yes.

A. Because of the transfer charges; either one transfer charge of 60 cents, or in the case of inbound water movement that goes out again by water there would be the two transfer charges; 60 cents each way.

Q. In addition to the application of the cargo owners to receive this square foot rate you do handle some cargo in C for your own convenience?

A. We have put some there.

Q. And that remains on a daily basis?

A. Daily basis, yes.

Q. The same as it would in the transit shed?

A. That's correct.

Q. And I assume that all the cost of handling cargo from the transit shed to and from C are for the Port?

A. That is correct.

Q. And again it is within your discretion as to whether you shall or shan't move to or from, or, let us say, between the transit shed and C?

[fol. 977] A. Yes; the same as if we would move it from one part of the transit shed to another part of the transit shed.

Q. And that would apply also, of course, to piling in the transit shed or piling in C?

A. That is all optional with the management.

Q. You have kindly given us these lease forms, which are in evidence as Exhibits 98 and 99. I wonder if you can tell us what companies are lessees under each of these two forms?

A. Have you copies of them?

Mr. Jones: Mr. Scoll has a list. I understand he was going to put in, and that will give that information.

Mr. Graham: Are you going to put that in?

Mr. Scoll: This is a list that was furnished to us by Mr. Jones. It shows the names of the tenants under long term leases and those also who hold under the licenses, both forms of which have been introduced in the record.

Mr. Graham: I wonder, Mr. Scoll, if you will put the list in.

Mr. Scoll: Put it in here?

Mr. Graham: Merely because of the fact that the evidence leaves a gap as the evidence now stands, because we don't know who are the lessees.

Mr. Scoll: I was planning to put it in. I can put it in now.

[fol. 978] Examiner Basham: Let us put it in.

Mr. Jones: Reserving my objection upon the ground of materiality, I presume that list is correct.

Mr. Scoll: I offer in evidence a letter from the Port of Oakland Board of Port Commissioners under date of January 23, 1940, addressed to the United States Maritime Commission, signed Alice S. Troxel, Secretary, to which is attached a typewritten list which is entitled "Leases and Licenses." At the end of this list is written in ink the name "Western Vegetable Oil." That name was added to the list of licenses by one of our staff after consultation with Mr. McCarl and Mr. Jones as one of the licensees, which was left out of the original list.

Exam. Basham: It will be received as Exhibit 103.

(The list of leases and licenses referred to was marked "Commission's Exhibit 103" and received in evidence.)

Mr. Scoll: And I ask leave to withdraw it to have copies made for the other respondent.

By Mr. Graham:

Q. Mr. McCarl, this Terminal Building C is a two-story building, is it not?

A. Yes.

Q. And you store on both the first and second floors?

A. Sometimes on the second floor.

Q. And that necessitates additional handling, service [fol. 979] charges or service, let us say, to get the goods to and from that second floor?

A. Yes.

Q. And if you move them for your own account those charges are also for your own account?

A. The only additional expense is going up and down the elevator.

Q. That is right. Now I go back to this extension of free time. In your opinion, aside from the question of competition, which I don't want you to consider for the minute, is that rule as presently stated, more flexible than, in your opinion, it should be?

A. I don't think so, in as much as we are a public body we are supposed to protect the public interests. I don't think it is too flexible.

Q. In other words, aside from any question of competition, which I don't want you to consider in answering this question, it is your opinion that this rule as presently stated and as presently applied should continue?

A. Unless it is determined that we are under some regulatory body.

Q. That is another problem.

A. I see no objection to a continuation of the rule.

Q. Among other lessees you have the Keystone Steel and Wire Company. Where are their facilities located?

[fol. 980] A. East Oakland at this facility at 19th and Livingstone Streets.

Q. Are those facilities adjacent to shipside facilities?

A. No, they are not.

Q. How far away are they from the nearest Port of Oakland shipside facility?

A. Well, they are pretty close to the lumber facility, which is open for lumber only.

Q. They don't use that facility?

A. No.

Q. How far away are they from the nearest facility which they use which belongs to the Port of Oakland?

A. I would say a mile from the Grove Street Terminal.

Q. And prior to locating there where was this company located?

A. I am not entirely sure.

Q. It was not on Port of Oakland property?

A. No, that is correct.

Q. Haven't you found that as a result of the making of this lease with the Keystone Steel and Wire Company that the business of the Port of Oakland in respect to the tonnage of this company has increased?

Mr. Jones: We will stipulate that that is the case, not only with Keystone but with all of our lessees, and that is one [fol. 981] of the primary purposes of making these leases.

A. I might say that we did get most of their tonnage prior to that, however, because they used the Luckenbach Steamship Company principally, and the Luckenbach Steamship Company used our Grove Street facility.

By Mr. Graham:

Q. And do they continue to use the Luckenbach Steamship Company, or did they following the signing of this lease?

A. Yes.

Q. Do you know whether they have used any other steamship company or any other steamship company has called at your facilities which did not heretofore call there?

A. There was some talk of it, but I don't believe, however, that we had any actual calling of other vessels of other lines with their tonnage.

Q. In other words, you do not know that other steamship companies called at your pier as a result of this tonnage that flowed to you as a result of this lease?

A. Not to my knowledge.

Q. Are you familiar with the amount of taxes that accrue to the Port of Oakland yearly?

A. Except the taxes that are levied to cover the interest charges, we don't levy any taxes for Port operations.

Q. Are those taxes that are levied levied as a result of action of the Board of Port Commissioners?

[fol. 982] A. As a result of charter amendment adopted by the people which specifies that the interest charges should be paid from taxation.

Q. Yes. But the levy is by the Board of Port Commissioners rather than any other body?

A. I believe the City Council makes the arrangement for that levy. The Board of Port Commissioners do not.

Q. Do you know whether there is a maximum percentage or figure beyond which this tax can not go?

A. I don't believe there is any maximum, because if all the bonds were sold the interest would be one amount, and a smaller number of bonds, the interest would be a lesser amount.

Q. On the question of amortization of these bonds, is that not taken care of by taxes also?

A. The same arrangement as for the interest.

Q. Yes, that is what I thought. So that the fact is that municipal taxes take care of bond interest and bond amortization?

A. That's correct.

Q. There is no prohibition, however, is there, against taxes taking care of operating expenses if this were found desirable to have them do so?

A. I don't think there is any prohibition, but we have always had more than sufficient revenues to cover the [fol. 983] operating expenses.

Q. But there isn't any prohibition?

A. No prohibition.

Q. At the present time am I correct in my understanding of your testimony that your operating revenue has been sufficient to take care of your operating expense?

A. Considerably more, yes.

Mr. Differding: Is that clear? Are you confining that to revenues and operating expense of the terminal facility?

Mr. Graham: If you will just wait a minute, I am going to cover that.

Mr. Differding: Pardon me.

Mr. Graham: That was my next question.

By Mr. Graham:

Q. Within the Port of Oakland jurisdiction are included a good many properties other than terminal facilities; that is correct, is it not?

A. That is correct.

Q. You have an airport?

A. That's correct.

Q. And you have properties like this property that is leased to Keystone Stool and Wire?

A. Industry.

Q. Industrial property?

[fol. 984] A. That's correct.

Q. In general, what other properties have you that you derive revenues from or that are a source of revenue or that are expensive to you?

A. I could possibly answer some questions along this line but I am not as well qualified.

Q. I just want it very general anyhow.

A. The principal source outside of direct operation are from the leases. There might be some so-called franchises. There is some question of whether we get those revenues or they accrue to the city. I am not quite sure. The leases, I think, would be the principal source.

Q. All of your revenue from whatever source, including the airport and the leases, industrial property, and so on, port operations, are pooled into one fund, I take it.

Mr. Jones: Not much from the airport though.

By Mr. Graham:

Q. Whatever revenues you have are pooled?

A. They are all taken in on the same fund.

Q. And all of your expenses are also pooled? In other words there is no segregation so far as you are concerned when you state that your revenues exceed your expenses?

A. No. That's correct.

Q. That is correct?

A. Total revenues and total expenses.

[fol. 985] Q. And you don't segregate, let us say, the storage account from the demurrage account or from your dockage account or your toll account? That is all revenue?

A. We keep separate items to know how much we derive from each of those sources, but we don't offset the cost against the revenue for respective services.

Q. That is what I was going to ask you. That is right. I think you testified that you had an increase in tolls and dockage and service charges. Are these the only increases in your charges that have been recently made?

A. Also carloading, car unloading. We put in a so-called freight transfer service charge that we didn't have previously.

Q. When were these increases made?

A. Quite recently.

Q. Well, within the last month, two months?

A. Within the last two or three months.

Q. And some of those increases were borne by cargo and some by the vessel, is that correct?

A. The service charges are borne by the vessel.

Q. How about dockage?

A. The dockage is borne by the vessel but it has been some time since there was any increase in that item.

Q. Tolls are borne by the cargo?

A. Tolls are borne by the cargo; carloading; service.

Q. Although I think the answer is obvious, but why was it [fol. 986] you made these increases on these particular items?

A. Through conferences with the other terminal operators, taking into consideration the order of the Railroad Commission, the feeling in general that the charges were too low.

Q. That is, too low, having in mind the service rendered or the capital investment involved for features of that nature?

A. Yes.

Q. And it is also a fact, of course, is it not, Mr. McCarl, that one of the reasons that you made the increases was to get more money?

A. Sure.

Q. Our associate over here has suggested that that was the main reason. That is probably true, is it not?

A. If we were just operating by ourselves I don't think the money factor would be quite as important as it is where we have private operators.

Q. Well, you do recognize, do you not, that the costs of operating the facilities which you operate, and particularly the port facilities, have increased and are now on the increase?

Mr. Jones: I think I will have to instruct Mr. McCarl—all right, I will withdraw that.

Mr. Graham: I think that is almost common knowledge, Mr. McCarl. You must know it also.

[fol. 987] A. I would say that the costs per unit have increased. Labor costs have gone up; materials and supplies.

By Mr. Graham:

Q. That is right. So that the cost of operating has increased in these facilities which you operate?

A. Yes, except I would have to qualify as to the tonnage increases. The total cost for operating facility may not have increased but the cost for the various services have increased.

Q. How is it that co-extensive with these increases you did not make any increase in your demurrage or storage rates?

A. Because our competitors haven't made any increases. We can't make any increases unless they do.

Q. But, as far as you are concerned, you are desirous of including in your increases an increase on storage and demurrage also?

A. I think some increases could be made.

Q. Have you determined in your own mind to what figure the rates should properly be increased in your facilities?

A. I think that requires pretty careful study.

Q. Yes, but——

A. (Interrupting) With respect to competitive conditions.

Q. I am just asking if you have determined in your own mind what they should be increased to.

[fol. 988] A. Not definitely, no.

Q. You would not like to make a statement on that?

A. No, I would not.

Q. By the way, when you testified that these rate increases, or rate changes or other changes in your tariff, many of them were made after agreement with or in concert with private terminal operators; is that the fact?

A. And public terminal operators; public and private.

Q. Other terminal operators, let us call them. Those other private terminal operators, however, who have made such rate changes, such changes are all subject to the California Railroad Commission, are they not?

A. Yes.

Q. And yours are not?

A. That's correct.

Examiner Basham: Do you have a regular meeting to determine those questions of tariff interpretation?

The Witness: Yes. Not regular. We used to have quite regularly, but we don't meet at any regular periods; just occasionally.

Examiner Basham: Do you have any kind of agreement or understanding among yourselves that you will meet to iron out these questions?

The Witness: Oh, just more or less implied. We have nothing definite. All of us are free to make changes as [fol. 989] we see fit, btu we don't consider it advisable or desirable to do that.

By Mr. Graham:

Q. Do you all agree on these interpretations when changes are made?

A. Yes. I would say we do.

Examiner Basham: And you haven't filed any memorandum of such agreement or understanding with the United States Maritime Commission?

The Witness: No, we have not. We have one under consideration at the present time; the California Association of Port Authorities. I think that will be done very shortly.

By Mr. Graham:

Q. Mr. McCarl, the private terminals involved in such a situation not only are required to file their charges with the California Railroad Commission but all of these changes are subject to approval or disapproval by the Commission and attack by any interested party?

A. That's correct.

Q. So that as to the private terminals, their agreement in these meetings is of no effect whatsoever until the California Railroad Commission passes on the propriety of such an agreement? That is a fact, is it not?

A. Yes.

Mr. Jones: Of course, that question assumes that the [fol. 990] Maritime Commission has no jurisdiction.

Mr. Graham: I am not worried about their jurisdiction. I am just concerned with what the private terminals' relations are with the California Railroad Commission in respect to these meetings that they have with the public terminals.

Examiner Basham: Let me ask you another question. At these meetings, what matters do you consider beyond the matter of tariff interpretation? Do you agree upon rates to be established?

The Witness: We discuss rates and agree in general upon the rates; not binding; no binding agreements, but we discuss them and arrive at conclusions.

Mr. Scoll: Are you referring to the meetings that you have with the Terminal Association of Central California, of which Mr. Cantolow is the manager?

The Witness: We are not a member of that association. We have meetings with the members of the association from time to time.

Mr. Scoll: Are these the meetings that you are now discussing?

The Witness: Those, and the California Association of Port Authorities meetings, at which the public and the private operators are present.

Mr. Scoll: What is the California Association of Port [fol. 991] Authorities?

The Witness: That is no formal association as yet; just in this tentative form. We are working on an agreement now which would be signed by most of the marine terminal operators in California. We propose to file it with the Maritime Commission.

Mr. Scoll: That would include operators in all of the California ports, is that correct?

The Witness: That's correct.

Mr. Scoll: You don't discuss with them rate matters relating solely to San Francisco Bay, the East bay of San Francisco, do you?

The Witness: No; no rate matters pertaining solely to the bay district.

Mr. Scoll: Such rate matters as you might discuss would be more likely discussed in the informal meetings to which you refer that you have with the members of the Marine Terminal Association of Central California, is that correct?

The Witness: That's correct, such as carloading, car unloading.

By Mr. Graham:

Q. Mr. McCarl, you testified the other day that some goods would not stand increased storage charges. What goods had you in mind at that time?

A. I have been told that beans, for one commodity, flour. [fol. 992] We have had shippers of paper give up the storage at our facilities and acquire private buildings which they have used for storage purposes. I don't think that commodity could stand any increase. We wouldn't get the business. I think that is quite true of a number of commodities that are handled.

Q. What others, except those three?

Mr. Differding: May I ask, Mr. Graham, would you clarify this "paper" item? There are all kinds of different papers.

Mr. Graham: I am going to clarify them all.

Mr. Differding: There are all kinds of paper articles. There are napkins, crepe paper, tissue and toweling,——

Mr. Graham: May I suggest, Mr. Differding, that if I do not cover them will you kindly follow through on this same item, because the witness has stated that in his opinion some goods would not stand increased storage charges, and I want to find out what the goods are and why they won't stand increased storage charges, and where the goods moved to and where the goods moved from. So if you will just bear close attention and break in when I finish, if I have not covered what you think should be covered, I will appreciate it.

A. Iron and steel stored in the open; lumber and lumber [fol. 993] products; fertilizer, pipe.

By Mr. Graham:

Q. That is also stored in the open?

A. Yes.

Q. As is the lumber?

A. Yes. There is canned goods and dried fruits are questionable. You might take those for the time being.

Q. Are these commodities which you have named, those which in your opinion will not stand increased storage charges, commodities which are stored on your facilities to move by water away from Oakland either in the intrastate, interstate, or foreign trade?

A. Some are inbound and some are outbound.

Q. That is all right. Some are inbound and some are outbound. Is it not a fact that total overall cost, including transportation, must be considered in determining whether these particular commodities can stand any additional charges? That is a fact, is it not?

A. Yes.

Q. So that you might just as well say as to any or all of these commodities that they could not stand any increased transportation charges. That is a fact also, isn't it?

A. I wouldn't answer that right offhand.

Q. You know that is a fact as well as I do.

A. Well, if all forms of transportation would increase, [fol. 994] which did not upset the competitive relationship, I think it might stand increased transportation charges.

Q. Then, in your opinion, as to these commodities that you have mentioned, it is not a case of the overall increases, but it is merely an increase which would affect the competitive conditions?

A. When I say, "wouldn't stand it," I have in mind whether we could still retain the business and increase the rates. If we increased the rates and drive away the business, then I would say it couldn't stand it.

Q. That is what I mean. Your interpretation of "couldn't stand any increase" means that the business would go to the competitor, but the business would still go on?

A. It might go to a competitor or it might cause the owners of plants to increase their own storage facilities.

Q. But, as I say, the business still would go on. That is a fact, is it not?

A. The business would go on in some form. It might force transportation from water movement to rail.

Q. I understand. When you use the term "will not stand increases," you mean that these commodities wouldn't stand any increased charges, having in mind your competitors?

A. Direct competitors and otherwise. It is a pretty broad subject.

Q. Well, that is what you mean by that, is it not?

[fol. 995] A. Yes. I think it requires careful analyzation as to whether or not they will stand an increase and still permit the business to move through our facilities.

Q. Yes. And so far as you are concerned, you have not had the opportunity, nor have you carefully analyzed each one of these commodities?

A. We have had a great many conferences in regard to the storage items, and I believe a number of others as well as myself, have doubted the advisability of making any increases, fearing that it would probably kill the business.

Q. By "kill" it you mean kill it as to your facilities? It would move to some other competitor, that is what you mean by that?

A. We have felt that those of us in the Bay area——

Q. (Interrupting) Let me ask you: Isn't that what you mean by it?

A. I wouldn't say "yes," or "no."

Q. I am just trying to find out what you mean when you say that the goods will not stand any increases. Do you mean that they will move to some other competitor, which is one subject; or do you mean that the goods won't move?

A. It might be either. For instance, if we increased the rate on canned goods and dried fruit and that caused the owners of the different canneries to increase their own storage facilities, that tonnage will not move to a competitor; [fol. 996] it will just kill the business so far as the terminal operators are concerned.

Q. I understand. But the goods will still remain to be sold? They still sell the canned goods?

A. Oh; yes.

Q. Is that true with all of these commodities? What you really mean is that these increased charges may result in either the business going to a competitor of yours in the same business that you are in, or that they won't go to a terminal operator at all?

A. Well, in general I might answer, "Yes."

Q. Yes. How come that the increase in tolls, dockage, service charges, carloading and car unloading and transfer charges did not have this effect?

A. The competition is limited in so far as those items are concerned, and after careful analyzation we felt that it would not materially affect the movement of tonnage through our facilities because those increases were made at the same time by our immediate competitors.

Q. Then I take it that, correspondingly, if the increases were made in demurrage or wharf storage by your immediate competitors that, likewise, would have no effect in respect to the movement of these commodities?

A. I think the competition is much broader in the case of wharf demurrage, and that is why I mentioned in the other [fol. 997] case "immediate competitors." I think there is the competitor and I think there is the additional plants that might be constructed and the old facilities that might

be acquired to use for storage purposes. The competition is much broader than the question of storage.

Q. You do agree, do you not, that the increase in tolls, dockage, service charges, carloading and unloading and transfer charges increase the total over-all expenses of the cargo owner?

A. They do, yes.

Q. And is it not as likely to assume that the increase in storage would have the same effect, if any, that the increase in the other charges might have?

Mr. Jones: Mr. Examiner——

By Mr. Graham:

Q. Why is there any distinction between the increases in one and the increases in the other?

Mr. Jones (Continuing) —that is the very question that has been asked and answered half a dozen times in the last 15 minutes.

Examiner Basham: Objection overruled. Go ahead.

A. It has been my experience in nearly 30 years of terminal operation that that is one of the most controversial items that the terminal operator has to deal with.

By Mr. Graham:

[fol. 998] Q. You mean, demurrage and storage?

A. Storge and demurrage. I have found that there has been a great deal of laxity in the assessment of storage charges. There has been granting of long free time periods without the assessment of charges on specific commodities. It is one of the most troublesome items that terminal operators have had to contend with, and that is why I say it is in a category of its own and not comparable with the other charges that the terminal operator makes.

Q. You are just wandering far afield. That is all very interesting information, but I am still trying to find why an increase in storage charges will have an effect that is not noticeable in an increase in tolls, dockage, service charges, carloading and car unloading.

A. In those other items they couldn't use private buildings. The conditions are entirely different.

Q. These beans to which you refer, what is the extent of the movement over your facilities of beans in water borne commerce?

A. We have quite a sizable tonnage of beans.

Q. "Sizable," doesn't mean anything to the record. How much?

A. I don't believe I have the definite tonnage figures with me. I can obtain that information for you. I didn't think we would go into that type of questioning and I didn't come [fol. 999] prepared for it.

Q. To where do those beans move? In what trades do they move? Off shore?

A. In intercoastal trade.

Q. Entirely?

A. Intercoastal and Gulf, including the Gulf; I think almost entirely.

Q. And if you increased your storage charges on these beans, to what competitor might they go, in your opinion?,

A. They probably would be held in the country warehouses, we are so advised. It might go to Stockton, Richmond or any other competitor in the bay area.

Q. Have you any idea, Mr. McCarl, the extent of storage given to beans in your facilities at your present rates?

A. I couldn't give you any——

Q. (Interrupting) In other words, how much cargo might you move? That is what I would like to know.

A. It would just happens to be a guess. I wouldn't know just exactly what our bean tonnage is.

Q. Is it much or little?

A. Yes, it is much.

Q. Quite a bit?

A. Yes.

Q. But you don't know how much?

A. No.

[fol. 1000] Q. Let us take flour. What is the situation with respect to flour? What tonnage of flour do you store now under those rates?

A. The principal storage on flour now is at the 9th Avenue Terminal under the direct operation, although we obtain the revenues. The operation is handled by the McCormick Steamship Company, and I don't know just what the tonnage is. We have some flour at Grove Street, but very little now. Most of it moves rail instead of water.

Q. In your opinion, what other facilities might store this flour if you raised your rates?

A. I don't think anybody would store it. I think it would move rail.

Q. How much of that flour moves over your dock facilities in water borne commerce?

A. Most of it moves rail. There is some storage even though it might be a small amount. So I would say that I don't know the exact tonnage figures. I have all those figures but I don't have them with me.

Q. How much moves over your dock facilities, do you know?

A. I would say——

Q. (Interrupting) In tonnage?

A. Quite a number of carloads per year. I don't know exactly.

Q. How many tons, you don't know?

[fol. 1001] A. No, not offhand.

Q. Not very much, in any event?

A. (No response.)

Q. I say, not very much in any event?

A. Not so much now. There used to be a lot in the past.

Q. In this case, as distinguished from the case of beans, the increase in your storage rates in your opinion might result in the movement of flour by rail rather than by water? That is what might happen?

A. In the case of flour you say?

Q. Yes.

A. Yes.

Q. Of course, you might have exactly the same thing happen if the water carriers increased their freight rates on flour?

A. Yes.

Q. Let us take paper. What kind of paper are you talking about in the first place?

A. I have in mind principally news print, but it also——

Q. Do you mean news print in rolls?

A. Yes. It also applies to other paper products, because we have made some pretty good sized increases in paper products fairly recently.

Q. You mean you have made increases in storage rates on paper products.

A. Yes.

[fol. 1002] Q. So that they have a special rate as distinguished from other cargo?

A. Yes, higher rates.

Q. And you have not found that those increases on paper and paper products have resulted in your losing the business to somebody else or going to rail?

A. Oh, I think to some extent, yes.

Q. Certainly not comparable with the increased revenue you have gotten?

A. Well, I wouldn't say for sure.

Q. Have you made any study into it at all?

A. No.

Q. Iron and steel: What would happen to it if you increased your storage and demurrage rates?

A. Well, we have been told that it costs much more to handle iron and steel, including scrap iron, through the bay area than it does in Southern California, and there is large tonnages that move out of Long Beach and Los Angeles that might move through Oakland.

Q. As a result of what?

A. As a result of the total expense of doing business at one place as compared with the other.

Q. That is right. In other words, the question of storage charges is at the most only one element in those expenses?

A. Well, we have had some very——

Q. (Interrupting) Now, listen. Isn't that a fact?

[fol. 1003] The Witness: What was the question again?

(The question referred to was read by the reporter as above recorded.)

A. Yes. Only one.

By Mr. Graham:

Q. Is it not a fact that the same thing can be said of the rest of the commodities which you have listed: Fertilizers, lumber, pipe, canned goods and dried fruit, because I don't want to go down through all of them?

A. I would say on lumber that our rates are much higher than our competitors.

Q. The same answer that you gave me with respect to iron, steel and scrap, applies to pipe, canned goods and fertilizer?

A. In general, yes.

Q. Yes. Would you say that considerable of your problem may be the result of the unregulated San Francisco terminals?

A. To some extent.

Q. And that if you did have uniformity in practice through regulation of all the terminals this problem might disappear?

A. We are trying to work out some——

Q. (Interrupting) This problem might disappear, isn't that a fact?

Mr. Jones: Regulation or otherwise.

The Witness: Read the question.

(The question referred to was read by the reporter as [fol. 1004] above recorded.)

A. I wouldn't say entirely.

By Mr. Graham:

Q. In connection with westbound cargo which may consist of several varieties for one consignee and which is delivered in part lots, is it not necessary to shift cargo to conserve space after the lot is pigeonholed due to part deliveries?

A. We haven't found that necessary.

Q. Your facilities are so large and you have so much space—let us call it "free space"—that you don't have to do that on your facility?

A. We usually have the cargo placed at the time of the discharge from the vessel so that it won't have to be moved. Stevedores put it directly at those locations.

Q. So that you can make partial delivery of lots without necessity of moving them thereafter?

A. That's correct.

Q. That situation would not prevail with most of your competitors, would it?

A. With some of them I would say it wouldn't.

Q. With most of them it wouldn't?

A. (No response.)

Q. Don't you think that is a fair statement?

A. I don't think I would say that is a fair statement, having in mind Parr-Richmond and Encinal, which would be [fol. 1005] about the same as ours.

Q. I may have asked you this, Mr. McCarl. Do you know how long a period it would take for the warehouse rate to result in a lower charge than a charge on a demurrage rate?

A. It would vary on different commodities.

Q. Can you give us any specific commodity?

A. No. I have had occasion to check that recently on one commodity, I recall, with Mr. Ventre. They operate warehouse facilities. And taking into consideration the in and out charges and the storage charges in comparison with the daily basis it took quite a period, quite several months before the warehouse would be cheaper than the dock. The reason I obtained that information was because our solicitors had been told that it would be cheaper to store in the warehouse. But I think in general it would take quite a little while in view of the transfer charges and the in and out charges, plus the storage, before the warehouse rates would be lower than the dock storage.

Q. Several months?

A. In general I would say, "Yes."

Q. So that the effect of that is that on your facilities, goods may remain on transit sheds in storage for several months at the reduced rate?

A. Yes, there is one——

Q. (Interrupting:) That is right, isn't it?

[fol. 1006] A. Yes, with one exception. There is no transfer at one of the competitor's facilities between the transit sheds and the warehouse facilities. That is my understanding.

Q. That is when that is made for the convenience of the competitor?

A. Well, I understand that there is no transfer between the transit sheds and the warehouse facilities.

Q. As far as you are concerned, you are in the same situation when you transfer to your transit shed at C for your convenience?

A. That is a different set-up entirely.

Q. That is a fact, is it not?

A. It is a different set-up entirely.

Q. Isn't that the fact, that when you transfer from your transit sheds to C for your convenience, that the expenses are borne by you?

A. (No response.)

Q. I think you stated that.

A. Yes, that is a fact. But there is no warehouse comparable to the other situation.

Q. May I ask you something about this bean cleaner? Do you rent the facilities to a private industry, which facilities are used for bean cleaning?

A. Those are his own facilities. That is the cleaner itself. We just rent the space.

[fol. 1007] Q. You just rent the space?

A. That's all.

Q. And that is on a lease basis?

A. Month-to-month for rental.

Q. Month-to-month rental basis?

A. Three cents per square foot per month.

Q. For space. And what he does with the cargo that goes in there with respect to charges on that cargo, is his business, is that right?

A. That is right.

Q. That is right?

A. That's correct. He has his tariff on file with the Railroad Commission.

Q. He does not hand any of that over to you at all?

A. When he does turn it over to us, we assess our charges in accordance with our tariff. After he has cleaned beans he may hold them for, say, the 30-day period and then they are turned over to us and then that becomes our property and then our charges apply.

Q. How long may he hold beans in storage?

A. So long as he wants to pay us 3 cents a square foot for space.

Q. After how long a period of time?

A. He just pays for the space that he occupies, and while he is paying us 3 cents a square foot, the beans are in his [fol. 1008] custody. When he turns them over to us, then our regular rate that we apply on beans comes to us.

Q. In this space which he occupies, which he can use as he pleases, you charge him a per foot rental, a per square foot rental?

A. That is correct.

Q. What is that?

A. Three cents per square foot per month.

Q. And that is whether he uses it for beans, machinery or anything else?

A. Any space that he uses.

Q. Does the Port of Oakland perform the service for receiving and delivery of cargo to and from this space rental area?

A. Yes, we receive it to and from.

Q. And delivering also?

A. I have in mind this transfer charge. We receive it from the dock and take it over to the space rented and then when it goes back for water movement we receive it from that space and take it into the transit shed for water movement. We receive it in conjunction with our service that we perform for the steamship companies in receiving cargo for outbound movement.

Q. And what is your charge for that delivering and receiving?

[fol. 1009] A. The 60 cents covers the transfer, and then we have the service charge against the steamship companies. That includes the receiving of cargo for outbound water movement.

Q. As to that cargo, however, in your space rental area, do you have any receiving and delivering that is not for water movement?

A. If it doesn't move out by water it generally moves by rail.

Q. Or truck?

A. We perform the carloading service and assess a carloading charge.

Q. And that takes care of your receiving and delivering?

A. And then we get a checking charge from the railroad companies if the cargo does come in by water. If there is any water movement connected with it the checking is covered by the charge assessed against the railroad company.

Q. As far as the charges are concerned themselves, you only assess a charge for carloading and car unloading and your rental?

The Witness: It isn't quite clear just what you mean there.

Mr. Graham: Read the question, please.

(The question referred to was read by the reporter as above recorded.)

By Mr. Graham:

[fol. 1010] That is the cargo itself. What does the cargo pay, except rent?

A. By the "cargo," you mean the charges to the shipper?

Q. Yes.

A. The carloading and the rental. This transfer, of course, is against the cargo.

Q. That is transfer from your——

A. (Interrupting:) From the transit shed to the terminal building.

Q. Is that the only kind of cargo that you have in your terminal building, cargo that is to or from your transit shed for water movement?

A. That's the only type we are interested in.

Q. Is that the only kind you have?

A. Yes. That's all I know of right now.

Q. In other words, you do not have any movement or any storage of cargo on cargo there that isn't at some stage of the game in water transportation over your dock?

A. There may be some beans that moved by rail that this bean cleaner operates himself. We don't check those in either direction, however. We have nothing to do with those.

Q. Does the Port of Oakland issue either a negotiable or non-negotiable receipt for cargo in this rental area?

A. Not the rented area.

Q. Not at all in the rented area?

[fol. 1011] A. We have never been called upon to do that.

Q. You don't issue anything at all?

A. No.

Q. No document?

A. No.

Q. What document does the owner of the cargo get as to the cargo that you have in such an area?

A. Take pineapple. That's the one that I happen to have in mind because that is all that there is in there on this basis, outside of these beans in the bean cleaner. When the cargo comes in from the vessel we transfer it over to the facility. As far as my knowledge goes, we haven't been requested to issue any receipts covering it. They know how much came in on the vessel. We issue a receipt to the steamship company.

Q. As having received the goods from them?

A. Yes. I don't know of any receipt being issued to the owner.

Q. But the steamship company doesn't own that cargo. Suppose the owner of the cargo came to you and wanted

some sort of a document, would you issue him a negotiable receipt?

A. We had that question raised one time and we didn't fully decide whether we would or wouldn't.

Q. In any event, you have never done it?

A. We have never done it.

[fol. 1012] Q. Then the rest is hypothetical.

Mr. Scoll: May I ask a question here to further expand that point?

Mr. Graham: Yes, surely.

Mr. Scoll: You referred in your testimony to situations where a shipper or consignee might have cargo on your docks under the wharf storage rate for some months. Do you recall?

The Witness: Yes.

Mr. Scoll: Do I understand you properly that even in those cases you do not issue any certificate or document or any other evidence of ownership to the owner of that cargo, so that if he wants to he may sell the cargo?

The Witness: All cargo that is put in the transit sheds that may be stored is receipted for by hand tag, what we call "memorandum" receipt. It is given to the truck drivers. Or in the case of cargo delivered by rail, we sign one of their delivery receipts that we have received the cargo.

Mr. Scoll: So that you either acknowledge the receipt on a rail delivery order or you issue your own memorandum receipt?

The Witness: Yes.

Mr. Scoll: Is that correct?

The Witness: Yes. Sometimes, the truck drivers have [fol. 1013] their own delivery form that is signed by the check clerk.

Mr. Scoll: But in any case you do issue your own memorandum receipt?

The Witness: Yes.

Mr. Scoll: Will you supply a form of that memorandum receipt for the record?

The Witness: Yes.

By Mr. Graham:

Q. Mr. McCarl, suppose the owner of some of that cargo——

Mr. Scoll: Excuse me.

Mr. Graham: I thought you had finished.

Mr. Scoll: Will you also supply for the record the form of dock receipt that you issue?

The Witness: Have you in mind this non-negotiable warehouse receipt that you had reference to?

Mr. Scoll: Yes.

The Witness: Yes.

By Mr. Graham:

Q. Suppose the owner of that cargo in such facilities wants to dispose of part of it and have it delivered to some conveyance. What kind of a document does he present to you which you can honor to permit the carrier to withdraw the cargo or a part of the cargo?

A. Do you still have in mind this terminal building C? [fol. 1014] Q. Yes.

A. He simply gives us instructions to make certain deliveries and we make them on the strength of this instruction.

Q. In other words, he writes you a letter, let us say?

A. Yes.

Q. "Deliver to John Jones a thousand cases of so-and-so"?

A. Yes.

Q. And you do it?

A. It might be a letter or a delivery order form.

Q. How do you recognize John Jones? Does he not present a document to you at all, the man who is going to get the stuff?

A. Not necessarily. It goes out by water principally. We simply deliver it to the steamship company in accordance with the instructions of the owner of the goods.

Q. Suppose that it does not go out by water but goes out by land transportation, rail or truck; then what do you do? Do you give it to any truck driver who drives up and says, "I am here for a lot of cargo for John Jones"?

A. No, we haven't had that experience.

Q. Well, you moved some of this cargo out by land transportation. You told me so.

A. This particular cargo that is on a space rental basis?

Q. Yes.

A. I told you some of the beans go out by land transporta- [fol. 1015] tion.

Q. All right. Now, what kind of a document do you get from them? I am just trying to find out what kind of a document you get or give in respect to this cargo that you have got in these sheds.

A. I think I stated that the beans that go out by rail are still in the custody of the bean cleaner operator.

Q. Let us take the beans that are in your custody that you described. Not the ones in the bean cleaner's custody. You told me that some of those beans are transferred to your custody. What I want to know is, what kind of a document do you give to whom in connection with that kind of a cargo?

A. We don't have to give any document. They are just transferred over to our custody.

Q. And you don't give any document at all?

A. No.

Q. So if someone came along and wanted a partial delivery of some of that cargo which you are holding in those facilities, if the man who deposited them with you wrote you a letter and said, "Give them to so-and-so," you would give them to so-and-so?

The Witness: Read the question, please.

(The question referred to was read by the reporter as above recorded.)

A. If we had a delivery order or letter from the owner to [fol. 1016] deliver them to a certain truck operator and the truck operator would come up to get them, we would deliver them to him.

By Mr. Graham:

Q. What identification would you require from the truck operator? I have asked that six times and I have been all around the barn to get the specific answer.

A. We don't have those specific instances; but the operators—the terminal force usually knows these various operators and we have never had any trouble about making misdeliveries.

Q. That is how you would make the delivery, because your terminal force knows the truck driver?

A. Yes.

Q. Thank you. This statement of yours which you wrote to Doctor Edwards on March 23, 1936, California Railroad

Commission, and which you read into the record, among other things you stated, "thus it would appear that the investment in transit shed facilties is primarily chargeable to the transit movement of cargo." What did you mean by that, what do you mean by it?

A. It might be possible that there would be no storage of goods whatever in a transit shed. The transit shed is constructed for the purpose of handling transit cargo primarily. In the case of inbound cargo the stevedores put the goods to their place of rest on the dock, delivery being made [fol. 1017] by a truck and the truck driver picks them up in that location and the expense of the whole facility in that case would be chargeable to the transit movement. Now, if the goods don't go out entirely within the free time period, some of them staying, one, two, three or four days, or possibly longer, the space is occupied for that length of time. There is no out of pocket expense for that storage. It is true that the space is occupied longer than the free time period, but the major portion of the expense for the facility would be charged against these other services.

Q. So that during this free time period, then, your income to offset your investment in those transit sheds is received from sources other than a demurrage or storage charge?

A. That's correct.

Q. Let us take the period beyond the free time. Your income during that period is not received from the services which you have suggested, but is received from storage or demurrage?

A. The income——

Q. (Interrupting) To offset this investment that you have described?

A. That's additional income in addition to the other revenues.

Q. Now, listen! You just a minute ago described to me that during the free time period your income is received [fol. 1018] from *from* sources other than storage or demurrage charges. Is that correct?

A. That's correct.

Q So that that income during the free time period, the income to offset the investment, is an income from service charges and so on, not having to do with storage. Is that right?

A. That's correct.

Q. After the free time period the income that you receive to offset the investment is the income from demurrage for storage. Is that right?

A. Yes.

Q. Now, as I understand you also, it is your opinion that the charges for demurrage should not be based upon the idea of penalty but should be based upon the idea of income?

A. That's correct.

Q. So that in order to determine whether your charge is reasonable or non-discriminatory in respect to both cargo and your competitors, you must determine your investment and the cost of storing, must you not?

A. I would say the cost of storing principally.

Mr. Graham: Yes. I think that is all.

Examiner Basham: Any further questions?

Mr. Townsend: I have a few more questions.

By Mr. Townsend:

[fol. 1019] Q. Mr. McCarl, I don't think that this matter of free time is quite clear on the record and I should like to follow that a little further, please. Will you take, first, the case of the vessel which calls directly at the Port of Oakland? First, let us take outbound cargo. Will you please state when the free time period would commence and when it would end?

A. It commences with the first a. m. following the day on which the cargo is received, and ends when the vessels start to load.

Q. Provided, I believe you said, that the cargo is actually placed on the particular vessel for which it is intended?

A. Yes.

Q. Then, in the case of inbound cargo where there was a direct call vessel, when does the free time commence and end?

A. On the first a. m. following complete discharge of the vessel it starts, and ends at the expiration of ten days, excluding Sundays and holidays.

Q. Let us consider next the matter of trans-shipment cargo and take the case of an outbound movement. When would the free time commence and end?

A. Trans-shipment, both movements by water?

Q. Yes. By that I mean, let's assume that the cargo is assembled at the dock of the Port of Oakland and is handled,

[fol. 1020] we will say, by the Panama Pacific Line in intercoastal trade. As I understand, that would be handled from Oakland to San Francisco by shallow draft vessel, from Oakland to San Francisco, would it not?

A. Yes.

Q. Will you take that cargo and describe when the free time would commence and end?

A. It would commence the first a. m. following the day of receipt at the terminal, and end with the—it would end ten days from that time. But if the barge delivered it during the free time period it would end when it was delivered to the barge. If the barge didn't pick it up until some later date after the expiration of the free time there would be some storage there.

Q. In other words, the time that is considered at the end of the demurrage period, so to speak, is when the shallow draft vessel actually lifts the cargo at the Port of Oakland?

A. That is, if that is during the free time period, the free time would end then.

Q. If that is after the free time do you charge the demurrage until the cargo is actually lifted by the shallow draft vessel?

A. It may come in for storage and get the ten days free time and then storage would be charged up until the time it was deliverd to the barge. If it came in consigned to the Panama Pacific vessel the free time would be computed from [fol. 1021] the first day a. m. following the day of receipt. If the shipper sent it in too early and it was earlier than the free time period he would have to pay storage for the additional time.

Q. Well, now, then, is it not a fact that frequently this trans-shipment cargo is handled by shallow draft vessel transferred to San Francisco over a period of several days for a particular vessel?

A. Yes, that's possible. It might be partial delivery, so to speak.

Q. And is that the reason why in computing your demurrage charges on that particular type of cargo you end your period on the dock as of the time when the cargo is actually lifted by the shallow draft vessel?

A. Yes. In computing storage that would be considered as being delivered when it was delivered to the barge.

Q. Yes. But, as I understand it, in the case of a direct call vessel for the purpose of computing your storage charges, you have a different practice?

A. Well, maybe I wasn't entirely clear then in that first answer. When you said the free time was computed, it is also computed from the first a. m. following the date of delivery, but adding ten days exclusive of Sundays and holidays from that starting point. If the shipper has set his cargo in more than that free time period ahead of the scheduled loading of the vessel, then he would have to pay [fol. 1022] for that additional number of days.

Q. Then, as a matter of fact, don't you take the actual time when the cargo is commenced to be loaded on the direct call vessel, but you take some scheduled sailing date?

A. We take our scheduled sailing date in determining whether or not the cargo utilized the facility more than the free time period.

Q. And that scheduled sailing date is the one that is published by the Port of Oakland, you mean?

A. That is correct.

Q. And the Port of Oakland publishes a regular sailing schedule of boats that it expects to call at its port, does it not?

A. That is correct.

Q. So that scheduled sailing date is intended to be the date on which the vessel will leave the Port of Oakland after complete loading, is it?

A. No. It is when it will arrive to commence loading.

Q. When it will arrive to commence loading?

A. Commence loading, yes.

Q. With respect to your trans-shipments, what does your sailing schedule show?

A. It shows the latest time that the terminal can receive cargo for that vessel.

Q. But, then, in the case of the trans-shipment cargo, if [fol. 1023] the cargo is actually removed from the dock by the shallow draft vessel before that sailing schedule, as shown in your announced sailing schedule sheet, you would break off your computation of storage charges prior to the date shown in your sailing schedule?

A. Yes. When it is actually removed it is so considered.

Q. Well then, is it not a fact that in the case of this outbound cargo you really have a different practice in the case of direct call service and in the case of trans-shipment?

A. No, I don't believe it is any different except that the direct call service—if a vessel requires more than one day in loading the time stops when the vessel starts to load.

Q. As I understand, it is not when the vessel starts to load; it is the theoretical time when it should have started to load; isn't that it, as shown in your advertised sailing schedule?

A. Yes. We figure that we can't charge a shipper for any errors that we might make in advising him of the scheduled loading dates of the vessel.

Q. How do you determine the sailing date that you show on your schedule?

A. We receive that advice from the steamship companies.

Q. How far ahead ordinarily?

[fol. 1024] A. I am just trying to look for it. I felt sure I had a copy someplace. It varies in the case of different steamship operators, between one and two months, six weeks.

Q. And aren't the actual*ly* sailing dates of those vessels generally changed from the time when they are published in your sailing schedule?

A. Sometimes changed; not generally.

Q. Well, isn't it a fact that there is a so-called "daily guide" in San Francisco that publishes the sailing schedules as of that day?

A. Yes.

Q. And those sailing schedules would frequently differ as the time approaches nearer the actual sailing date? They would differ from your sailing schedules?

A. Yes. There are changes, yes.

Q. So then, as a matter of fact, under your method of computing your storage charges and free time periods you adopt one or two months ahead of some theoretical sailing date and you stick to that, even though the sailing date may be changed by the steamship company several times before the actual sailing date?

A. Yes. We issue these schedules bi-weekly, or twice a month, and they are revised from time to time. In other words, the shippers are advised of the changes through the [fol. 1025] issuance of these bi-weekly. If they ship cargo in a long time ahead for storage or it is intended to go on a vessel, say, one or two months ahead, we would allow the free time period and then charge them for storage up to the time of actual delivery. We forget about the advertised

sailing date when cargo comes in a long time ahead of the actual loading.

Q. Do you mean by that, if somebody sends his cargo several months ahead of the advertised sailing date as advertised in your schedule, you would compute the storage charges, not up to the date shown in your actual sailing schedule but to some other time?

A. Actual time of delivery. We would allow him ten days free time and then we would charge him storage up to the time of delivery.

Q. Then, as a matter of fact, you don't have any hard and fast rule as to the period of time that will be be used to determine the end of the storage period?

A. We use the ten-day—simply take the starting point and figure the ten days, and we have to take into consideration, of course, the advice that we had given the shippers. But, supposing, take as a specific instance, we advise that a vessel is due to load on the first of the month and he sends his cargo in on the 20th of the preceding month; say the vessel doesn't actually get there until the 3rd or 4th of the [fol. 1026] month. We figure that he is entitled to that additional free time by reason of the incorrect information that we gave them as to the scheduled loading date of the vessel.

Q. So then, as a matter of fact, you could actually allow these shippers longer free time than one of your competitors, for example, if you merely gave a little more leeway to the date that you set forth in your scheduled sailing dates, could you not?

A. There is some differences between competitors; one, two days, possibly three days; a limited time. I think we all endeavor to list those accurately according to the information that is given us by the steamship operators.

Q. But the man who trans-ships his cargo actually pays until the cargo is really listed?

A. I can't see where there is any particular difference between the trans-shipment and the other.

Examiner Basham: I think the difference is clear on the record, if any.

By Mr. Townsend:

Q. Let me ask you one further question on this point: Don't you think it would be better in every instance to con-

sider the end of the storage period as being the time when the cargo is actually lifted from the dock, regardless of whether it is lifted by a direct call ship, or by a trans-shipment vessel?

[fol. 1027] A. Who would you collect the storage from by reason of error? Who would you hold responsible for that storage?

Q. Well, that is your question. I want to ask you my question.

A. I would say that I think the present practice is the proper one.

Q. Even though there is no hard and fast rule involved?

A. Well, I think it is hard and fast to the extent that all shippers are treated alike.

Examiner Basham: We shall take a short recess.

(At this time a short recess was taken, after which proceedings were resumed as follows:)

By Mr. Townsend:

Q. Mr. McCarl, I want to get your views with respect to the length of free time period which is proper. Let us take the case of inbound cargo and let us assume that certain cargo arrives at the Port of Oakland for a consignee who is located in Reno, Nevada, or Fresno, California. Isn't it a fact that what has to be done in connection with that cargo is substantially as follows: In the first place, the Port of Oakland must send advice to the consignee that the goods are on hand; then it is necessary for the consignee to make arrangements for the transportation of that cargo from the Port of Oakland to his place of business in either Reno or Fresno, and that may require arrangements with a [fol. 1028] motor truck operator; and, furthermore, it may be necessary for that company to make arrangements to pick up the documents at a bank. Isn't that substantially as is required?

A. Yes. There is a lot of detail there to be taken care of.

Q. Yes. If it is a fairly large shipment and if it is to move by motor truck, does it not frequently happen that that movement must take place over a period of a few days because of the fact that the capacity of the truck or of the truck operator is limited?

A. That's right.

Q. Is it your opinion that a 5-day free period is sufficient to take care of a movement of that character, or do you think that 10 days is a fairer free time period?

A. Personally I am in favor of the 10 days for all trade routes. It simplifies making quotations and there is ample time, I think, to cover all these requirements. I am personally in favor of the ten days. But for the sake of uniformity and give-and-take, we have expressed ourselves as being willing to go along with the others on some basis such as the San Francisco basis, but, personally, I prefer the ten days.

Q. Have you not found in your past experience that, as a matter of fact, it frequently does take ten days before the consignee removes the goods from the dock, or can move the goods from the dock, if he acts with reasonable speed? [fol. 1029] A. I think that is a fair amount of time.

Q. Have you found also that ten days is frequently required in the case of outbound cargo when you take into consideration the fact that his shipper may be located at a distance from the Port and may have a substantial amount of cargo to assemble and label and to ship by a motor truck operator with a limited capacity?

A. Yes, I think that is reasonable time.

Q. You referred to the matter of certain meetings of the Marine Terminal Association in connection with proposed increases in the rates of the private terminal operators around San Francisco bay. I am not sure that the record is quite clear on the procedure. Is it not a fact that in many instances the representatives of the Port of Oakland attend those meetings and discuss the proposed increases in the rates of the private operators?

A. That's correct; yes sir.

Q. Is it not also a further fact that after there has been that informal approval given by the various operators to the proposed increase of a private operator that the Port of Oakland signifies to the Railroad Commission of the State of California its approval of that proposed increase in writing?

A. Occasionally we have been asked to do that.

Q. You referred to the fact that there is a bean cleaner [fol. 1030] in Terminal Shed C, did you not?

A. Terminal Building C, we call it.

Q. How do you determine how much square foot area is used by the bean cleaner?

A. The cleaner itself?

A. Well, how much rental will be charged against that bean cleaner operator?

A. He always wants reserved for him a minimum amount of space, and then, as he requires additional space during the heavy season, additional space is allotted and the charge adjusted.

Q. Do you mean by that that you always set aside for this bean cleaner operator a definite amount of space for the coming month?

A. Well, for some period, not just for a month. He always wants a minimum amount of space.

Q. But you agree with him in advance as to how much space he will be charged for during a certain period in the future?

A. Yes, that's agreed in advance.

Q. It is agreed in advance. You don't go around from time to time and see how much he is actually using and charge him for that amount?

A. No. It is more agreed in advance.

Q. Well, do you make any check of how much he is actually using?

[fol. 1031] A. Oh, yes, yes. We have a man there every day.

Q. What if he uses more than the amount that you anticipate that he would need?

A. He is always charged for it. He never gets any space without charge.

Q. And he would be charged on a monthly basis for whatever he used in excess during a particular month?

A. That's right.

Mr. Scoll: It is on a square foot basis?

The Witness: It is on a square foot basis.

Mr. Townsend: That is all.

By Mr. Vaughan:

Q. Mr. McCarl, I want to straighten out something on which I am not clear. You stated last night that the Port of Oakland issues both negotiable and non-negotiable forms of warehouse receipts that are used as collateral for bank loans?

A. That's correct.

Q. Is that your usual practice?

A. We aren't called upon to issue that type of receipt very often but we do whenever it is requested.

Q. Upon request you will do it?

A. Yes.

Q. Otherwise you use that form of dock receipt. Is that true?

[fol. 1032] A. That's right; memorandum receipt.

Mr. Vaughan: That is all.

By Mr. Graham:

Q. Is that for goods in this warehouse C?

A. I believe I answered your question to the effect that I don't know that any receipt was definitely issued covering the goods. It came in by water and it was put over there and I don't recall that we had to issue any receipt. I know we didn't issue a so-called "warehouse receipt," either negotiable or non-negotiable.

Q. In response to Mr. Vaughan's question, or in line with it, would you, if you had some goods there and wanted it; I asked you that before, and I thought you said, No, you wouldn't.

A. I believe you said that was a conclusion and didn't require an answer.

Mr. Jones: You said it was hypothetical——

Examiner Basham: Off the record.

(Remarks outside the record.)

Examiner Basham: On the record.

By Mr. Graham:

Q. What I want to know, Mr. McCarl, is what you would do in respect to the issuance of a document—any kind of a document—covering goods in this Warehouse C if somebody requested it.

[fol. 1033] A. If I was requested to issue a warehouse receipt I would take it up with our legal department to see whether or not we should issue such a receipt in view of the fact that the goods aren't definitely in our custody. I don't know just what his ruling would be.

Q. You mean in Warehouse C the goods are not in your custody?

A. When they are on a space rental basis.

Q. Is it not a fact that in Warehouse C, that you take goods on this demurrage basis also?

A. Sometimes; yes sir.

Q. Yes. As to those goods, if the man came to you and asked you for a negotiable warehouse receipt or a comparable document, would you give it to him?

A. Oh, yes.

Q. Those goods are in your custody?

A. Yes.

Q. As to goods which are in Warehouse C or any other warehouse which is rented out on a space rental basis, a different situation may arise?

A. I am inclined to believe we would issue it.

Q. You would issue a negotiable warehouse receipt even in those cases?

A. We have enough control over it that I think we could.

Mr. Graham: I think that is all.

[fol. 1034] By Mr. Fullerton:

Q. Mr. McCarl, this morning you testified regarding the various charges, and I believe you testified that these charges were changed in accordance with conferences. I believe you used the term "agreements" with the other operators, both public and private. I think that you used the term "agreement" in a broad way and did not mean actually "agreement." As a matter of fact, when you want to change a charge—we will say, for instance, a carload rate—and you want to reduce it, that is, the Port of Oakland wants to reduce it, is it fair to say that first you clear with your own people and then you take it up with, say, the public port people, perhaps Stockton, San Francisco, as to whether there would be any objection to the proposed reduction; and if you do that, what is their reply to you?

A. In the case of different items of service we would confer with different parties. There is no written agreements of any kind. As a rule, most of the understandings are orally.

Q. Well, as a matter of fact, do these public bodies say to you: "We agree that there should be a reduction," or do they say, "It is all right if you want to put it in, we will go along with it," or perhaps one of them will say, "No, we think the present charge is in order, and if you must re-

duce it we won't go along with you,"? There is no formal [fol. 1035] agreement?

A. No, there is no formal agreement; not binding on anybody; just an understanding.

Q. And isn't that approximately the same thing with the private operators? On this same reduction in a carloading charge you go to the private operators—say, the Marine Terminal Association—and your tell them that you propose to reduce this particular charge, and then some of them, of the Association, may protest and the others may say, "Well, we will go along with you," and the result is that you know that you are not going to have too much trouble if you do reduce your charges, isn't that the way that it goes?

A. Something like that; just an understanding between the various parties.

Q. Well, you may know, for instance, Encinal does not favor the reduction in the charge and Howard is in favor of it, or vice versa, but you know that Encinal or Howard, whichever one does not like the reduction, is not going to cause you too much trouble so that you know that you are safe in making effective the reduction?

A. Something along that line.

Q. In other words, you don't have a formal or informal agreement with them that they will all reduce this charge?

A. Nothing formal.

Q. And, then, don't you have to go to the various opera- [fol. 1036] tors in San Francisco and also the carloading contractors and others, and tell them what you propose to do before you put this charge into effect?

A. I would say the different services are handled in different channels. In the case of the carloading and car unloading, that is handled through the San Francisco Carloading Association, of which we are a member. That is usually a clearing house for the carloading and unloading items.

Q. But there is no formal or informal agreement by the various parties that they will all reduce this particular charge or increase it, as the case may be?

A. I would say nothing formal, nothing binding.

Q. You know that you have to get a certain amount of revenue, you have to increase the charge, or you know that you have to induce further cargo to come across your facilities, so you have to reduce it, and you go to bat to get

that change made and you explore these other bodies to see whether there is going to be too much opposition to it. Isn't that in effect what happens?

A. Well, I say we probably wouldn't make a change unless the rest of them do. There is some understanding, nothing formal about it, nothing binding, but we have some understanding.

Q. You want to be pretty sure that if you make the change [fol. 1037] there is not going to be retaliation by some of these public bodies?

A. That is right. We want to know there is going to be no competition on rates.

Q. But there is no agreement?

A. No agreement.

Q. And the understanding you referred to does not amount to an agreement by the other parties?

A. I wouldn't say there is an agreement.

Q. Mr. McCarl, you stated that you felt that a penalty demurrage was all right at a new port?

A. How is that?

Mr. Jones: I don't think there is any such testimony.

Mr. Fullerton: He said that in answer to a question by Mr. Graham.

The Witness: Just the other way, I believe.

By Mr. Fullerton:

Q. Pardon me. I had just exactly the reverse. You said that a penalty demurrage was in order excepting at a new port.

A. Well, I don't think I put it that way. I say that I don't see why a new port building up its business should want to make a demurrage, storage rate a penalty rate. It is just a question of getting all the revenue they can get, [fol. 1038] taking the—putting into effect the service without what you call a "penalty" rate to drive the business away.

Q. After you cease to be a new port and the tonnage is coming through well worth channels, do you feel it is still in order to put a penalty demurrage in effect?

A. I don't see why it should be called a "penalty" demurrage. I don't see the necessity for the penalty demurrage.

Q. You think in any case, then, there is no necessity for a demurrage charge, whether you call it "wharf storage" or "wharf demurrage," high enough to compel cargo to move off of your facility?

A. It depends on the conditions. If you need your space, then you don't want the storage business. If you don't need your space, then it is desirable to get some revenue from storage. It all depends on conditions.

Q. Well, am I correct in saying that you have testified to the effect that the Port of Oakland has a wharf storage charge that is not a penalty charge?

A. That's correct.

Q. Is the level of that charge set to induce revenue to the Port of Oakland?

A. Yes, but we are not responsible for the present charges. Those are all worked out in conjunction with the other operators. They may be increased somewhat and [fol. 1039] thereby increase the revenues without driving the business away.

Q. You consider that the Port of Oakland is a new port?

A. Fairly new.

Q. How old is it, Mr. McCarl?

A. Well, the Board of Port Commissioners was created in 1926.

Mr. Jones: '7.

The Witness: 1927.

By Mr. Fullerton:

Q. How does its age compare with the other ports and terminals about the Bay? Take Encinal, for instance.

A. Well, I wouldn't consider them a port, particularly. The major ports are much older up and down the Coast. There is San Francisco, Los Angeles, Portland, Seattle, Tacoma, Vancouver, and it takes a long time to develop a port and particularly in the situation that we are here with San Francisco an old established port.

Q. Let us consider that the facilities I am referring to are just the wharves and the sheds at Oakland. How old are those?

A. Well, the sheds constructed by the Board of Port Commissioners, are within the last 13 years.

Q. How does the age of those facilities compare with the age of similar facilities that are operated in San Francisco Bay and its tributaries?

[fol. 1040] A. They are much newer than most of the other facilities.

Q. Do you know when the Encinal facilities were constructed?

A. I think in 1925; was it?

Q. One or two years prior to the construction of the Oakland facilities?

A. That's right.

Q. And Stockton?

A. After the Oakland facilities.

Q. And Parr-Richmond?

A. The new facilities were constructed after some of the Oakland facilities.

Q. So that, so far as the age of facilities is concerned, the Oakland facilities are about as old as any of them?

A. But none of those you mentioned are called "major ports." We are competing with the major ports. We expect to be a major port and we have a long way to go yet to reach our goal.

Q. So your competition with the local terminals is merely incidental to another program? In other words, you are aiming at Los Angeles, Portland and Seattle?

A. Yes; a much bigger program than we have at the present time.

Q. Mr. McCarl, you stated a little while ago that you found that there was a certain laxity of assessments in storage charges and also in the granting of free time. Could [fol. 1041] you give some example of those that you found?

A. Well, I know it was done before I came with the Port of Oakland, which was some 13 years ago. I know it was very prevalent in Portland and Seattle, in the northwest.

Q. You came to Oakland when?

A. In 1927.

Q. 1927?

A. And at that time——

Examiner Basham: What bearing does that have on the proceeding? After all, we are interested in present practices.

By Mr. Fullerton:

Q. Can you give any instances of present practices?

A. Present?

Examiner Basham: Yes.

A. (Continuing:) I don't know of any specific violations except that we know that it is a very controversial subject up and down the coast. They have a great deal of trouble with it along the coast. We always hear rumors of violations of free time storage periods.

By Mr. Fullerton:

Q. I did not understand that your statement that you found this laxity referred to a period of perhaps 13 or more years ago. Do you know of any examples of such laxity within the last five, six years?

[fol. 1042] A. Around the Bay area I don't know of anything definite enough, but it has been discussed at a number of our terminal operator meetings in recent years, as to whether or not demurrage charges are always assessed in San Francisco. Under the system of the wharfingers going around to the various facilities, where they always pick up these items that should be assessed, there has always been a question of whether they do that or not. Just more recently down in Los Angeles, I believe, they had considerable trouble in the way of steamship companies not passing on to shippers demurrage charges which were assessed against them, which showed that there was a difference in the practices as between steamship companies.

Q. Mr. McCarl, is it fair to say that you know of no specific example where there has been a laxity in assessment of storage charges or the granting of free time within the last five or six years, in the San Francisco Bay area?

A. I don't know of any specific instance.

Q. And that your statement that you found this referred only to a period, say, 13 to 15 years ago?

A. Back in that time I think I can safely and very definitely say that there was a great deal of laxity. We helped to straighten that up.

Q. Of course, that was prior to the time that the California Railroad Commission took jurisdiction over the var-

[fol. 1043] ious privately-owned terminals in the San Francisco Bay area? Is that not correct?

A. That's correct.

Q. Do you know of any such laxity since the California Railroad Commission took jurisdiction over the terminals?

Mr. Jones: Mr. Examiner, I think that the examination has been unduly prolonged, going into issues that have no proper place here. I think Mr. McCarl merely mentioned that in passing last night, that some time ago at the time the Board of Port Commissioners started there was this rather chaotic condition. There is no charge against any terminal operator on our part, and I think he is the only witness who has mentioned that, any present violation; I don't think that it has any relevancy.

Examiner Basham: I don't think that we need to argue. I don't think the witness knows of any such incidents.

The Witness: I so stated.

Mr. Fullerton: I merely wanted to correct the impression that was made by a statement this morning, Mr. Examiner.

By Mr. Fullerton:

Q. Mr. McCarl have you ever high piled freight at the Port of Oakland and then had this same freight move within the free time after one or two days of demurrage?

A. We have had such cases, yes.

[fol. 1044] Q. And have you had occasion where the Port of Oakland has paid for this high piling?

A. They always paid for it.

Q. Has the wharf demurrage revenue received from the cargo, assuming that it was one or two days after the end of the free time, been sufficient to pay the cost of the physical handling of the high piling?

Mr. Jones: I instruct Mr. McCarl not to answer that question.

Mr. Fullerton: On what ground?

Mr. Jones: I am not assigning any ground.

Examiner Basham: What was the question?

(The pending question was read by the reporter as above recorded.)

Examiner Basham: I think the witness should answer.

Mr. Jones: I instruct him not to answer.

Mr. Fullerton: May I consider that you have instructed him to answer?

Examiner Basham: Yes.

By Mr. Fullerton:

Q. Mr. McCarl, in the case that this freight has been moved one or two days after the free time, has there been a wharf demurrage or a wharf storage charge assessed against the freight?

[fol. 1045] A. If there is any incurred it was assessed.

Q. Can you explain your answer, "if there is any incurred"? Isn't it necessarily incurred after the free time?

A. I think I mentioned about a vessel being delayed, or something along that line.

Q. Take a normal case. There has been no delay of the vessel.

A. If the charge is incurred then it would be assessed.

Q. If it does not fall within one of those exceptions, a charge is incurred under your tariffs?

A. Yes, that's right.

Q. And this is, say, one or two days after the expiration of the free time. If it is assessed in accordance with your tariff is it collected by the Port of Oakland?

A. Yes, certainly.

Q. And what would this amount to in dollars and cents for a ton of canned goods?

A. For one ton of canned goods?

Q. Yes.

A. You said one day?

Q. Yes.

A. Our rates is 2 cents a ton a day.

Mr. Differding: Let us have the record straight. It is one and a quarter cents a ton a day.

The Witness: Pardon me. It is one and a quarter cents [fol. 1046] a ton a day in that particular commodity.

By Mr. Fullerton:

Q. What would be the cost of high piling this?

Mr. Jones: The same instruction, Mr. McCarl.

A. We don't high pile.

By Mr. Fullerton:

Q. I thought you stated that there had been such instances.

A. Without going into the matter of costs, may I state that we don't make any practice of high piling. That is not a problem with us.

Mr. Jones: Mr. Fullerton, the statement of high piling was with regard to pineapple, I think.

By Mr. Fullerton:

Q. However, high piled canned goods other than pineapple?

A. There might be some instances.

Q. However, have you ever piled anything that has moved out within one or two, or perhaps three days after the expiration of high piling?

A. I don't think so, outside of pineapple. None that I recall.

Q. You don't recall any instance?

A. Not other than pineapple.

Q. Is it unreasonable to assume that there might be an instance. You stated that you believe that your facilities are underbuilt and it is conceivable that at times they are [fol. 1047] congested. Is it unreasonable to believe that other commodities other than pineapple may from time to time be high piled and may move out within one or two or three days at the expiration of free time?

A. That might require some explanation. Our facilities are not at one place. We have different facilities and this temporary congestion, if you might call it that, occurred at one of the facilities where we were considering the possibility of adding to those facilities. But congestion hasn't been any problem with us.

Q. To go back to my question: Is it unreasonable to believe that such an instance may happen some time?

A. Well, if it happened very much we would add to our facilities.

Examiner Basham: Why don't you answer the question?

The Witness: It may happen.

By Mr. Fullerton:

Q. And if it does happen, under your tariffs, would there be a wharf demurrage or wharf storage charge assessed for that one, two, or three days?

Mr. Jones: That has been asked and answered half a dozen times.

Mr. Fullerton: The witness seems to be a little evasive and I would like to find out where we stand on this.

[fol. 1048] Mr. Jones: I don't think there is any evasion on this.

A. There is no intention of being evasive. I think I answered, if the storage charges are incurred they are incurred and collected.

By Mr. Fullerton:

Q. Where cargo has been high piled and has been moved within one, two or three days after the expiration of free time, is a wharf storage charge incurred under your tariffs?

A. Unless, as I stated before.

Q. Barring the exceptions set out in your tariff?

A. Yes.

Q. And, if it is so incurred, is it assessed and collected?

A. Yes.

Q. And in the case of canned goods this amounts to what per ton?

A. One and a quarter cents per ton per day.

Q. What is the charge under your tariffs if there is a charge, or, if there is no such charge, what is the cost of high piling canned goods?

Mr. Jones: Just a minute. Is that question in the alternative or not?

Mr. Fullerton: I will reframe the question.

By Mr. Fullerton:

Q. What is the cost of high piling a ton of canned goods?

[fol. 1049] Mr. Jones: The same instructions, Mr. McCarl.

Examiner Basham: The witness should answer.

Mr. Jones: I repeat the instruction.

By Mr. Fullerton:

Q. Mr. McCarl, you stated yesterday that certain wharf demurrage rates in the northwest have been changed from a period basis to a daily basis because of the difficulty of collecting period basis charges. Is that correct?

A. A long time back, yes.

Q. Were those rates on file with any regulatory body?

A. No.

Q. And I assume that when you say "a long time back," that you are referring to, perhaps, 1925, '26, '27, or some place in there?

A. Along in there.

Q. Prior to your arrival at the Port of Oakland?

A. That's right.

Q. Is it your belief that daily rates on wharf demurrage are proper because of the difficulty of collecting period rates when the freight only stays two or three days over the period?

A. I would say the question of justification—period rates, I don't think you are justified for short time occupancy. I think the public interests have to be considered there, what is a proper charge for such service.

[fol. 1050] Q. Do you believe that the difficulty of collecting a period rate when the goods only stays for a short time is the principal reason why daily rates should be charged?

A. I don't say that it is the principal as we try to make our rates what we consider fair and equitable to the public. And if they were unfair it would naturally follow we would have difficulty in collecting them. We have had a hard time to argue, or we would have a hard time to argue that they should be paid.

Q. Perhaps I misunderstood your testimony. Would you give me the reason why you believe that the period rate is unfair to the public?

A. I don't think we should charge anybody for the service that isn't incurred. And if a lot of goods comes in and it is mostly delivered within the free time period, part of it goes out on the 10th day and there is no storage, and part of it goes out, on, say,—the balance goes out, say, on the 11th day, I don't see why we should charge anybody for 15 days or 30 days or any long period. I think we should just charge them for the day that that space is occupied.

Q. Is the difficulty of collecting period storage charges one of the reasons that you advocate a daily charge?

A. That's one of the reasons.

Q. Are you familiar with the fact that warehousemen [fol. 1051] may have the same difficulty in collecting full storage charges when the cargo is only held for two or three days?

A. I should think that they would have.

Mr. Jones: I object to the question as argumentative.

Mr. Fullerton: This is an expert on the subject, I believe, Mr. Jones.

Examiner Basham: He has not so qualified him as an expert. I think it is argumentative.

Mr. Fullerton: I will withdraw my question.

The Witness: I think I drew some distinction between——

Examiner Basham: Never mind.

Mr. Jones: There is no question, Mr. McCarl.

By Mr. Fullerton:

Q. Mr. McCarl, you have submitted a list of the leases and licenses from the Port of Oakland to various lessees, and licensees, exhibit No. 102. I should like to ask you some questions regarding these various leases and licenses. Mr. McCarl, can you give me the terms of the Atlas-Imperial Diesel Engine Company lease?

Mr. Jones: For what purpose?

Mr. Fullerton: I want to know the terms.

Mr. Jones: What is the purpose? In other words, do you want to encumber this record with the terms of every one [fol. 1052] of those 75 or 100 leases that are referred to in that list?

Mr. Fullerton: That is exactly what I want to do, only I wouldn't use the term "encumber."

Mr. Jones: Mr. Examiner, I submit that we are going to undue length here. We are serving no useful purpose at all. This witness has been on the stand for hours and hours, going over the same ground. The leases are in evidence. They are available for counsel and why should Mr. McCarl be called upon to explain any of the terms now? They speak for themselves.

Mr. Fullerton: Mr. Examiner, it is our belief that these leases, which Mr. Jones has stipulated were entered into to induce cargo to move over the Port of Oakland, are also at non-compensatory rates, and I would like to go into that subject.

Mr. Jones: The amount of the rental is in each of the leases; the area is shown, and you can figure out for yourself whether or not the per square foot basis is compensatory. Mr. McCarl is certainly not a real estate expert.

Mr. Fullerton: Then will you agree to introduce copies of each of these leases?

Mr. Jones: I shall not. I am willing to give you, however, the rental and the area if you want that. You have the form on which these leases are drawn and the special leases are [fol. 1053] in evidence. If you want that information I will give it to you.

Examiner Basham: Off the record, please.

(Remarks outside the record.)

Examiner Basham: On the record.

By Mr. Fullerton:

Q. Mr. McCarl, should as a result of this hearing an order issue from the Maritime Commission relating to and regulating the practices of the terminal operators in the San Francisco Bay area, do you believe that the Port of Oakland and the other municipally owned and operated terminals should be exempt from such order?

Mr. Jones: How can this witness answer that question?

Mr. Fullerton: This is the Assistant Traffic Manager.

Mr. Jones: And if he doesn't believe it, what difference does it make?

Examiner Basham: That is what I say. I don't think the question is relevant.

Mr. Fullerton: I will withdraw the question. That is all.

Mr. Scoll: I would like to ask one or two questions to clarify the record.

Redirect examination.

[fol. 1054] By Mr. Scoll:

Q. In response to certain questions, you testified that you knew of no recent laxities in the application of wharf storage or wharf demurrage charges or in the granting of free time in the San Francisco Bay area. Do you know of a recent voyage of the Lena Luckenbach which arrived at Eastbay terminals, several days late during January of 1940, about January the 20th?

A. I understand that she was late, yes.

Q. Was she late calling at the Oakland terminal?

A. I believe she was.

Q. Which of the terminals operated by the Port of Oakland did she call at?

A. I am not just quite sure but it would be the Grove Street Terminal inbound and Outer Harbor Terminal outbound. I don't just recall the specific instance except to hear something about it being delayed. There are so many vessels, I just don't recall that particular one.

Q. Well then, are we to take it that you don't know whether the Lena Luckenbach was late at Outer Harbor or Grove Street?

A. I wouldn't say definitely that I know it was late at that facility.

Q. Well, do you know, or don't you know?

A. I can get the information for you.

[fol. 1055] Mr. Jones: We can check on that, Mr. Scoll.

By Mr. Scoll:

Q. If the Lena Luckenbach was late would a demurrage charge have been assessed on goods waiting there for her or waiting there to load into that vessel for the days she was late?

A. If we advised the shippers in our sailing schedule that it was scheduled to be there on a certain date and goods were sent in on the strength of that information, we would then protect the shipper to that extent, if he vessel was late.

Q. You don't refer to that protection, then as a laxity?

A. No, no. I don't think that is any laxity.

Q. What specific instances do you refer to when you use the term "laxity", and I wish you would be as specific as possible.

A. When I used that term "laxity" I had in mind going back several years. I know it was very lax in the north west because they didn't assess the charges. Sometime they give 30, 60 and longer free time periods. When I first came down here in the Bay area, I was informed that, particularly in so far as storage was concerned, there was unlimited laxity. As a matter of fact, tonnage was obtained by waiving of storage charges. One of the lessees of the City—I think it was a lessee—the Lawrence Terminal Company, didn't have a bona fide lease.

[fol. 1056] Q. Of what city?

A. Of the City of Oakland,——

Examiner Basham: I think we are getting far afield here.

The Witness: Is that answering the question as he put it?

By Mr. Scoll:

Q. Well, you have added a lot to the answer, more than I expected.

A. That is what I had in mind.

Q. When you stated that you protect shippers, or consignees under the schedule of steamer sailings and arrivals which you publish, you mean, do you not, that you will only assess charges based on the dates contained in that schedule. Isn't that correct?

A. The schedules are changed from time to time.

Mr. Scoll: No, excuse me. Please read the question.

(The question referred to was read by the reporter as above recorded.)

Mr. Jones: You said, "that" schedule. I think he has a right to answer the way he did.

Mr. Scoll: "Such" schedules.

[fol. 1057] The Witness: Based upon the latest schedule. If the shipper routed his cargo on the strength of that schedule, if it is in storage, it would be different.

Mr. Scoll: Thank you. I would like to offer at this time for the record "Port of Oakland Steamer Sailings and Arrivals June 15, 1939, Schedule No. 234."

By Mr. Scoll:

Q. That is a specimen of your schedule, is it not, Mr. McCarl?

A. Yes.

Mr. Scoll: I would like to offer it for the record.

Mr. Graham: Could I interrupt for one question right here, Mr. Scoll?

Mr. Scoll: Surely.

Mr. Graham: You say that the shipper ships or delivers his cargo in reliance upon a schedule. How do you know which schedule he relies on if you change them?

The Witness: It depends upon when the cargo would come in.

Mr. Graham: In other words, if it came in on the third of February and you had issued a schedule on the second

of February you would assume that he was relying on the second of February schedule.

The Witness: If he had time to receive that.

Mr. Graham: What is that?

[fol. 1058] The Witness: If he had time to receive that schedule.

Mr. Graham: Let us say that he received the first schedule on the 21st of January and the second schedule on the 2nd of February.

A. Yes.

Mr. Graham: You would assume that he was relying on the 2nd of February schedule and not the schedule he received on the 21st of January?

The Witness: Yes.

Mr. Graham: That is how you work these schedules dates and the reliance on these schedules?

The Witness: Yes. I think the other operators are uniform on that.

Examiner Basham: What is the purpose of the exhibit, Mr. Scoll? What is intended to be proven by it?

Mr. Scoll: The exhibit has information which I think will serve to clarify this question in respect to when the charges are assessed. Taken in connection with Mr. McCarl's testimony, I think it would serve to clarify the record considerably.

Examiner Basham: It will be received as exhibit 104.

(The sailing schedule referred to was marked "Commission's Exhibit 104" and received in evidence.)

[fol. 1059] Mr. Vaughan: Did you finish, Mr. Scoll?

Mr. Scoll: Yes.

Mr. Vaughan: I just want to clear up a matter.

Recross-examination.

By Mr. Vaughan:

Q. I understood you to say that you did not believe that storage rates based upon a period of time were fair. Is it not true that all of these leases that you have with the Atlas Diesel, Libby, McNeil & Libby, Rosenberg Bros., and down the line are all on a period of a monthly basis?

A. That is not transit shed storage. I am talking about transit shed storage when I am talking about whether a period basis is fair or unfair.

Q. As a matter of fact, Warehouse C is on the basis of 3 cents per month, is it not?

A. If the owner of the goods elects to use that basis.

Q. It is still stored, though, is it not?

A. Long time storage, yes.

Q. And then to your knowledge doesn't the entire warehouse industry recognize that monthly storage for period storage is a fair method of assessing storage charges?

A. The goods are moved into the warehouse with that understanding and for the purpose of leaving the goods for some time.

Mr. Differding: Are you through, Mr. Vaughan?

[fol. 1060] Mr. Vaughan: Just a minute.

By Mr. Vaughan:

Q. Does your tenant on dried beans pay you a monthly storage rate?

A. The Oakland Bean Cleaning Company?

Q. Yes.

A. He pays at the rate of three cents per square foot a month.

Q. And he operates as a public utility, does he not?

A. That is my understanding, yes.

Q. And he charges his patrons on a monthly storage basis, does he not?

A. That is my understanding.

Mr. Vaughan: That is all.

By Mr. Graham:

Q. What is the difference as to whether you store that fellow's beans or he stores them in that facility or on the transit shed in respect to the basis of the charge? That is what I can't get through my head.

A. When the goods are shipped in the transit sheds they aren't shipped there primarily for storage. They are shipped there for transit movement. They may go out within the free time period and there is no storage incurred, and the only expense of the operator is the space that is occupied for that additional time. They were sent there for long time [fol. 1061] storage. They pay no in or out charges. The transportation company takes care of these labor charges in getting the goods in and out. It is entirely different from a warehouse operation.

Q. Doesn't the fact remain, Mr. McCarl, that on those goods that you in fact store in a transit shed, that they are exactly in the same category as those goods that are stored in your non-transit sheds? They are stored goods, aren't they?

A. They are stored goods if they stay over the free time period.

Mr. Graham: That is all right.

Examiner Basham: Further questions?

Mr. Differding: Are you through, Mr. Graham?

Mr. Graham: Yes.

Redirect examination.

By Mr. Differding:

Q. Mr. McCarl, can you say whether or not your tonnage on wharf demurrage has increased since 1935 up to and including 1939?

A. I believe all of our tonnage has increased, and I think that would probably hold true of more goods in storage due to the fact that we have had greater volume of shipping.

Q. And then, likewise, your revenue from wharf demurrage or storage, you described, is likewise increased?

A. That would be my guess: That it has, without having the actual figures.

[fol. 1062] Q. During the same period of time, is it not true that your labor costs involved—that is, in what transferring you may do, however small,—or the labor furnished in operating high-piling equipment, has increased since 1935?

A. Yes.

Q. And similarly the cost of the clerks employed to make these deliveries, whether there are half a dozen or fifty, have likewise increased?

A. Yes.

Mr. Differding: Are you willing to stipulate, Mr. Jones, that all costs of operation have increased for the dock labor, clerking and overhead expense, plus the cost of materials and supplies and, correspondingly, a decrease in the efficiency of that labor and clerking?

Mr. Jones: I think that is a fair stipulation. Yes.

Mr. Differding: I am satisfied with that.

By Mr. Differding:

Q. Referring now to those items mentioned by Mr. Vaughan last night, Mr. McCarl, such as issuing railroad bills of lading, handling C. O. D. charges, issuing receipts for each specific shipment and also rendering detailed statements of small deliveries from a lot of cargo, for which you make no charge, those are the costs to which I called your attention last night, are they not, as being indicated on [fol. 1063] pages 100 and 101 of exhibit No. 61?

A. Yes, those are included.

Q. It is a fact also, is it, Mr. McCarl, that your rate on general merchandise N. O. S. covers more specific commodities or more different commodities than any other item in your tariff covering wharf demurrage?

A. Yes.

Q. And that rate remains the same today as it did in 1929 when the Railroad Commission first exercised jurisdiction over these private operators?

A. That is the same rate.

Q. Two cents per ton per day?

A. Yes, that's right.

Q. I would like to call your attention to your current tariff, exhibit 71, in which there have been some departures from that merchandise N. O. S. rate as it was published in 1929 and as effective today. Taking, for example, excelsior in bales at 7 cents per ton per day and under the heading of "Paper and paper articles, napkins and towels," seven cents per ton per day. What were the principal factors that justified you in increasing those charges so much higher than your general merchandise N. O. S. rate?

A. The principal knowledge that they were faulty and required considerable space, and through discussions we felt [fol. 1064] that the N. O. S. rates were too low and should put in commodity rates at the higher levels. Some rates on other commodities have been increased and these particular ones have been increased.

Q. And in addition to the use of more than the average amount of floor space, is it not also true that the numerous small deliveries required in those types of commodities was the additional factor?

A. I wouldn't say entirely. Excelsior, I don't believe we have handled any of that. What were the other items mentioned?

Q. But you have actually handled paper napkins and towels, have you not?

A. Those always have been expensive to handle. I don't know as there has been more added service than we used to give, but they have always been expensive to handle.

Q. But here, nevertheless, you have reflected that additional service by advancing your charges above the merchandise N. O. S. rate of 2 cents per ton per day, have you not?

A. Yes, that is correct. And we have also given consideration to increasing the N. O. S. rate, but we can't do that unless all of our competitors do it at the same time.

Q. It is true, is it, that Encinal, Howard and Parr-Richmond and yourself all have two cents per ton per day?

A. That is correct.

[fol. 1065] Q. And also the Port of Stockton at 2 cents per ton per day?

A. Yes.

Q. And your competition that you have in mind is actually the piers in San Francisco, isn't that right?

A. Well, I think those that you mentioned and, in addition, the San Francisco piers.

Q. Well, just a minute. They have the two cents per ton per day rate now. What is the reason that you can't get that charge above 2 cents per ton per day? Have they indicated that they would not go along with you? That is, excluding San Francisco.

A. Well, we have had conferences principally between the East Bay terminal operators, I think possibly excluding Stockton, and we considered increasing that rate some time back. But we didn't finally do it, because I don't think the matter was discussed fully with Stockton by the party that was to discuss it. I think it was the manager or party in charge of the Marine Terminal Association at that time that was to discuss it with Stockton.

Q. Did you hear Colonel Allin's testimony here yesterday, that he thought 5 cents per ton per day on the merchandise N. O. S. rates—I believe he named that commodity—was in his opinion appropriate? I believe he started out with 6 cents and then brought it down to 5 cents. Does that somewhat meet your idea as to what the proper charge [fol. 1066] would be for merchandise N. O. S.?

A. No, I don't think so. I think Colonel Allin has greatly changed his views recently from what they were recently.

Q. Do you think he has changed them since yesterday?

A. He has certainly changed them from what I understood they were a little time ago.

Q. What was your opinion on that?

Mr. Jones: I believe that question was asked by Mr. Graham or someone else this morning, Mr. Differding. The witness said it require a lot of study and he is not prepared at this time to give it.

By Mr. Differding:

Q. Is that your answer?

A. Yes. I think it would require a lot of study to determine that question.

Q. Then the other commodities in that tariff which reflect a charge higher than the N. O. S. rate in your tariff, the same factors that you previously referred to, the principal ones that you testified to that are above that N. O. S. rate; is that correct? I will restate the question.

Examiner Basham: Strike it out.

By Mr. Differding:

Q. The other commodities, other than paper napkins and towels and excelsior in bales, which have a charge higher [fol. 1067] than merchandise N. O. S., have been given the same consideration that you have previously described in your answers to excelsior and bales and paper napkins and towels; is that correct? I call your attention specifically to wall board N. O. S. and veneer N. O. S. Do the same factors apply to that as previously you said applied to excelsior?

A. Yes.

Q. Is it also true of other paper articles, such as tissue, boxes, bags, wrapping paper?

A. Yes.

Q. Also wool in bales?

A. Yes. Our competition increased its rates on that commodity, which enabled us to increase ours, too.

Q. And, generally, if your competition is willing to go along with some other increases you would have no objection?

A. I think those could be worked out so that some increases could be made.

Mr. Differding: That is all I have. Thank you, Mr. McCarl.

Recross-examination.

By Mr. Townsend:

Q. Mr. McCarl, do you agree with the statement made by Colonel Allin when he was on the witness stand that the Port of Stockton and representatives of the Port of Oakland do not discuss proposed rates and tariff changes in advance?

[fol. 1068] A. We haven't made a practice of discussing those with Stockton. We have had some meetings in years gone by. I think Stockton sat in with us and we discussed certain items, but not recently.

Q. That has been some time ago?

A. Yes.

Q. At the meetings of the Marine Terminal Association which have been attended by representatives of the Port of Oakland, have representatives of the Port of Stockton been present?

A. I don't recall any.

Mr. Townsend: That is all.

Examiner Basham: Are there any further questions?

Mr. Jones: I have one.

By Mr. Jones:

Q. Mr. McCarl, is it not a fact that all of these terminal facilities of the City of Oakland, the Board of Port Commissioners, as well as all these leased facilities which are referred to in the list, which has been received as exhibit 103, the leases and license agreements, are on tidelands that were conveyed to the City of Oakland by the State of California?

A. That is my understanding there.

Mr. Jones: That is all.

Examiner Basham: You are excused.

(Witness excussed.)

(Whereupon at 12:30 p. m. a recess was taken until 1:30 p. m. of the same day.)

[fol. 1069] Afternoon Session 1:30 P. M.

Examiner Basham: Come to order, please.

Mr. Differding: I will call Mr. Gates.

Mark H. Gates resumed the stand and testified further as follows:

Direct examination.

By Mr. Differding:

Q. You have previously been sworn, Mr. Gates?

A. I have.

Q. Would you state again for the record how long you have been employed by the Board of State Highway Commissioners at San Francisco, Mr. Gates?

A. A little over twelve years.

Q. Did you hear the testimony of Mr. McCarl yesterday afternoon going back to 1927 at which time he stated in answer to a question that there was in effect at the Bay terminals a charge of 12½ cents per ton for seven days, which was taken from the tariff of the Board of State Harbor Commissioners at San Francisco, for bulkhead demurrage?

A. Yes. I think I heard him make that statement.

Q. This bulkhead demurrage, to which frequent reference has been made, is what, Mr. Gates?

[fol. 1070] A. Well, it is a charge that is made for cargo on the regular transit pier under certain conditions.

Q. May I suggest that when you refer to your tariff, that is exhibit 64 of record in this proceeding.

A. 64.

Mr. Graham: You mean that is the December 1, 1925 tariff?

Mr. Differding: Yes, amended as of December 1, 1939.

The Witness: On page 19 of exhibit 64, starting at the bottom of the page, it says:

"When space is available and the prompt loading and discharging of a vessel will in no manner be interfered with, cargo as described below may, at discretion of the Chief Wharfinger, be held at demurrage rates of 12½ cents per ton, weight or measurement, whichever will give the greater revenue, for each seven days or part thereof; Sun-

days and Holidays not excepted (one ton minimum) (Lumber may be charged per 1000 feet, board measure.)"

It continues on page 20:

"1. All cargo that is not removed by vessel for which assembled; such cargo as rejected, left over, or overlooked (Until stored, such cargo is subject to wharf demurrage, commencing from date vessel finishes loading or leaves pier, [fol. 1071] at rate of 2-½ cents per ton per day for the first five days, five cents per ton per day for the next five days, and ten cents per ton per day for each succeeding day thereafter.)

"2. Outbound cargo in transit received prior to assembling date of vessel. Charge to commence when cargo was placed on pier and continue until receiving date of vessel.

"3. Inbound cargo in transit pending final disposition. Charge to commence at expiration of free period and to continue until cargo is lifted or removed from pier."

By Mr. Differding:

Q. Now, first I would like to have you state your interpretation of the words "In transit" and used in Condition No. 3, which you have just read, and which appears in a number of other places in your tariff, covering wharf demurrage charges at pages 18 to 20, inclusive.

A. Well, in this case I take it to mean cargo that is not for local delivery. It is either coming from or going to other point.

Q. You mean "Local delivery" within the confines of the boundaries of the City and County of San Francisco?

A. Yes.

Q. Is that the way that the Board of State Harbor Com- [fol. 1072] missioners has always construed it?

A. Yes.

Q. Would you state for how many years prior to 1927 was this bulkhead basis of demurrage available when the Chief Wharfinger exercised his discretion in applying the charge?

A. No, I couldn't tell you how long.

Q. Is it a number of years prior to 1927?

A. I think so, but I am not certain. I don't know how long before that.

Q. This particular item, as you have read it into the record, Mr. Gates, calls for the application of the charge

on a weight or measurement basis, whichever will give the greater revenue. How is that determined?

A. Well, the Chief Wharfinger knows pretty well what commodities will yield the greater revenue by either one method or the other.

Q. By that do you mean that you have built up a comparison of weights or measurements on various types of commodities by test, checks over a period of time?

A. I think that's the answer, yes.

Q. Can you state of your own knowledge that this test of weight of measurement, whichever will yield the greater revenue, has always applied when bulkhead demurrage was assessed?

A. That is the practice, yes.

[fol. 1073] Q. I understand Mr. Geary, the Chief Wharfinger of the State Board of Harbor Commissioners is here and will be the next witness. I will reserve questions as to how he exercises his discretion. He is the best person qualified to do so, Mr. Gates?

A. Well, probably so. However, I think I can tell you pretty well how he exercises his discretion.

Q. All right.

A. You might supplement that by his testimony.

Q. All right. Will you go ahead and explain "when space is available and the prompt loading and discharging of a vessel will in no manner be interfered with, cargo as described below may, at discretion of the Chief Wharfinger," the Chief Wharfinger exercises his discretion as to the granting of the bulkhead basis of wharf demurrage?

A. Well, it depends entirely on that question as to whether the granting of so-called bulkhead demurrage will interfere with the loading of a vessel. The actual procedure is this: That he does not extend this rate except the steamship company on whose pier—that is, on the pier assigned to the steamship company—unless the steamship company either applies for it itself or approves the application of the shipper.

Q. Now, what is the ordinary procedure followed by the Chief Wharfinger in granting this? In other words, if it [fol. 1074] is the case of the steamship company seeking this permission they make a written request of the Chief Wharfinger; is that correct?

A. It isn't always the steamship company that seeks the granting of this rate.

Q. Confining it, first, to the steamship company's request for their own convenience?

A. Well, the reason that we require the approval o the steamship company is because we don't want to tie up their operations.

Q. Well, now, taking the case where this bulkhead basis is entirely for the benefit of the steamship company, what is their procedure in advising you of their desire.

A. It is not for the benefit of the steamship company. It is for the benefit of the shipper, but we will not interfere with the operations of the steamship company by allowing it to remain there.

Q. If you will turn to Condition No. 1, all cargo that is left over or overbooked, that is entirely a matter of the steamship company, is it not, and not the shipper?

A. That's right.

Q. In connection with that Condition No. 1 what does the steamship Company ordinarily do in applying to the Chief Wharfinger for the application of this bulkhead basis?

A. They write a letter.

[fol. 1075] Q. They write a letter?

A. Yes.

Q. And what subsequently happens after that?

A. The Chief Wharfinger then uses his discretion as to whether it shall be allowed or not.

Q. And I assume that it is generally stated by the Steamship company that——

Mr. Kilkenny: May I interrupt you for a moment? I tried my best to get back here, but I could not get back here at the starting time. I want to object, if the Examiner pleases, to any questioning of this witness or of any other witness called from the Harbor Board in regard to any charges or any rates that are fixed for or determined by the State of California or the Board of State Harbor Commissioners in the operation of the San Francisco Harbor or any of the properties or facilities of said State used in connection with the operation of said Harbor to regulate the fixing or collection of any rates or charges in connection with such operation.

I further object upon the ground that the Shipping Act of 1916——

Examiner Basham: Well now, Mr. Kilkenny,——

Mr. Kilkenny: Yes.

Examiner Basham: I think you have already made your objection to any testimony along this line, and it has been [fol. 1076] overruled.

Mr. Kilkenny: Did I make objection to testimony in regard to this same matter?

Examiner Basham: Well, that is all right. But you won't have to argue your objections. You can do that in your brief?

Mr. Kilkenny: I want my objection to cover everything, Mr. Examiner. I want to be certain about that.

Examiner Basham: I thought you had finished your statement. What is it you are objecting to?

Mr. Kilkenny: I want to state the grounds of my objection.

Examiner Basham: I don't want to hear any argument on that objection because it will be overruled, and you can put that in your brief.

Mr. Kilkenny: Still, I want to state the grounds for my objection. I think that is part of my objection.

Examiner Basham: All right, go ahead.

Mr. Kilkenny (Continuing): —on the ground of I further object to any further questioning along this line and to any questioning in regard to any rules or regulations issued by the Board of State Harbor Commissioners, particularly in regard to the subject of wharf demurrage for storage or dockage or tolls or rents, or craneage.

Mr. Differding: I presume you mean to include free [fol. 1077] time, too?

Mr. Kilkenny: What is that?

Mr. Differding: That is the other subject.

Mr. Kilkenny: And the ground of that is that the shipping Act of 1916 does not apply to any such rates or charges or the collecting of any such rates or charges by the State of California or the Board of State Highway Commissioners. And I want to put it on another and separate ground: That in establishing, instructing, maintaining and operating the harbor at San Francisco, and all the property and facilities used in connection therewith, including the fixing, adoption and collecting of all rates and charges in connection with the operation of said harbor and property and facilities, the State of California and the Board of State Highway Commissioners for the San Fran-

cisco Harbor are acting in a Governmental capacity and performing a governmental function; and that while so acting and while so performing such governmental function, they are not subject to regulation by Congress, and that the United States Maritime Commission has no jurisdiction of any such activities.

Examiner Basham: Your objection will be noted and overruled.

Mr. Kilkenny: May I have an exception noted to that ruling?

Examiner Basham: Yes, sir.

[fol. 1078] The Witness: Mr. Examiner, may I have the privilege of consulting with counsel for a moment?

Examiner Basham: Yes.

Mr. Kilkenny: It is understood that this testimony is given subject to all my objections?

Examiner Basham: Yes, sir.

Mr. Kilkenny: May the objection run to all questioning of this witness?

Examiner Basham: Yes.

Mr. Differding: And among the specific items that you referred to you meant to include, did you not, free time, Mr. Kilkenny?

Mr. Kilkenny: Yes. I want the matter of free time included.

Mr. Differding: Now, we have covered them all, I think.

Mr. Kilkenny: We object to any questioning along that line on the same grounds that were given to the other objection by Mr. Differding.

Q. Before Mr. Kilkenny stated his objections, I believe I asked you, Mr. Gates, as to whether or not the usual practice of the steamship company is to state in their communication to the Board that there is sufficient space available on their assigned piers and the prompt loading of the vessel and prompt discharging of the vessel will not be [fol. 1079] interfered with; is that correct?

A. I can't give you that detail. I don't know the exact form that those letters state.

Q. May I ask, Is any separate investigation made by the Chief Wharfinger as to that fact or not?

A. I am sure there is, yes.

Q. What is the course of procedure followed when a shipper desires the bulkhead basis? Is that usually directed to the steamship or to the Board?

A. Well, it is my understanding that it is directed to the Chief Wharfinger. It may be directed to the Chief Wharfinger. It may be directed to the steamship company, and then the steamship company may ask for it directly.

Q. Taking the first situation where it is sent directly to the Chief Wharfinger, what does he do, then, upon the receipt of that request?

A. I am afraid I am going to have to ask you to get that information from Mr. Geary—those details.

Q. All right. We will defer those questions until Mr. Geary takes the stand. Turn to page 18 of exhibit 64, Mr. Gates under the heading "Free time for assembling cargo," will you tell me how long the five days free time applicability to the coastwise and inland waterways trade has been in effect at the San Francisco assigned piers?

A. So long as I can remember.

[fol. 1080] Q. And that is prior to 1927?

A. Yes.

Q. The next item, ten days free time applicable to foreign, offshore and intercoastal trade?

A. I believe at one time it was seven days. It was increased to ten.

Q. And approximately when was that?

A. I can't give you that answer.

Q. Was it about five years ago?

A. I can't be sure.

Q. The paragraph lettered "b", where reference is made to wharf demurrage charges on coastwise and inland waterways trade when left on the space longer than the free time period, which is five days, and prescribes a charge of 2½ cents per ton per day, weight or measurement, whichever will yield the greater revenue, for the first five days or part thereof, and five cents per day per ton for the next five days or part thereof, and ten cents per ton day for each succeeding day late, one ton minimum, and lumber may be charged per 1000 feet, board measurement; can you tell me how long that item has been in effect?

A. No, I cannot.

Q. Has that been prior to 1927?

A. I think so.

Q. Here, again, do the bases of weight or measurement [fol. 1081] apply in every particular by the Board in assessing the charges?

A. That is the practice, yes.

Q. Similar to that referred to under bulkhead basis. Paragraph (c) refers to foreign, offshore and intercoastal trade and prescribes the basis of the charges of 2½ cents per ton per day from the first to the third days, inclusive; five cents per ton per day for the fourth to seventh day, inclusive; and ten cents per ton per day for each succeeding day late. Could you tell me how long that basis of charge has been in effect?

A. No, I cannot, Mr. Differding. It has been a long time.

Q. Was it prior to 1927?

A. I believe so.

Q. And the charges that I have just read in connection with paragraphs (b) and (c) of the free time period for assembling cargo which is applicable to all the trades is assessed against the vessel, is that correct?

A. That's right.

Q. What justification can you offer, Mr. Gates, for the difference in the bases of charge applicable to the coastwise and inland waterway trade as compared to the charges applicable to the foreign, offshore and intercoastal trade?

A. I don't think I can answer that question very well.

Q. Very well. Turning over to page 19 under the head- [fol. 1082] ing "Free time for removing discharged cargo," which reads as follows:

> "Exclusive of Sundays and Legal Holidays, Coastwise and Inland Waterway and Intercoastal cargo remaining when necessary, on space assigned longer than five days, Foreign, Offshore longer than seven days, and in transit cargo longer than ten days, shall thereafter (Sundays and Holidays not excepted) be assessed a wharf demurrage charge of 25 cents per ton, weight or measurement, whichever will yield the greater revenue, for the first five days or part thereof, and fifty cents per ton for each succeeding period of five days or part thereof (one ton minimum)."

Can you tell me how long that particular provision has been in effect?

A. So long as I can remember.

Q. Prior to 1927? Here, again, the use of the words "Weight or measurement," in assessing the charges mean just what they say?

A. That's right.

Q. Here we find the charges on a different basis than that applicable to the free time for assembling cargo. In other words, for assembling it is on a per ton per day basis, and differing as between certain trades as compared with all of the cargo inbound from vessels. What justification [fol. 1083] can you offer at this time for that different bases of charges, Mr. Gates?

A. Well, I would say to the best of my knowledge, that cargo that arrives before the arrival of the vessel, or something of that kind, is not always the fault of the shipper; while, on the other hand, discharged cargo when it is on the pier can be taken off within the free time.

Q. And those charges appearing under the heading "Free Time for removing discharged cargo" on page 19 is what has been commonly termed your "Penalty" basis of wharf demurrage, is it not?

A. That's right.

Q. And you so designate it yourself?

A. Well, there isn't anything in the book which says it is a penalty.

Q. But that is the term that you have commonly used, is it not?

A. Yes.

Q. And what has been the basis of those charges, Mr. Gates, if you know? Were they determined upon cost, or what was thought to be a charge that would actually be a penalty charge to force the cargoes off the piers?

A. I think in this particular case the charge was made a penalty charge higher than would be economical for the shipper to leave the cargo on the piers, in order to force it off. That is the purpose of it: To clear the transit sheds. [fol. 1084] Q. To clear the transit areas on the piers?

A. For other operations.

Q. And this penalty basis, as well as the bulkhead basis, applies to all of your assigned piers?

A. That is right.

Q. They do not apply at any time in connection with these facilities designated as Piers 45 and 56, which are operated by the Golden Gate and State Terminals; is that correct?

A. They do at some time.

Q. What are those "some times"?

A. Where regular in transit operations are carried on at those terminals.

Q. By that you mean, taking State Terminal first, where they are the terminal agent for half a dozen steamship lines regularly serving San Francisco, you would have this basis applying at that facility?

A. Yes, on regular in transit operations.

Q. On in transit operations?

A. Such as would be carried on at other piers.

Q. Do you have that same situation obtaining at the Golden Gate Terminal?

A. That's right.

Q. Are they also regular terminal agents for several lines in the various trades?

A. Well, I don't know that, but certain operations are [fol. 1085] carried on there; regular operations.

Q. Turning over to page 22 of exhibit 64, which sets forth the charges for the Golden Gate and State Terminals, which appears under the heading "Terminal Toll and demurrage rates," it reads as follows:

> "Toll and demurrage rates at State Projects Terminal (56)"—which is now called the State Terminal,—"and Pier 45 Terminal, for terminal operations shall be as follows:
>
> "General Merchandise
> "(Not otherwise specified)
>
> | | Per ton |
> |---|---|
> | "Toll (10 days free time) | $0.15 |
> | "Demurrage, first 20 days following free time | .15 |
> | "Demurrage, next 30 days or fraction thereof | .25 |
> | "Demurrage, next 30 days or fraction thereof | .30 |
>
> "Demurrage rates beyond the above periods shall be 30 cents per ton for each 30 days or fraction thereof."

First, I will ask you, What is the significance of the words in the heading here in the second sentence of the first paragraph, Mr. Gates, where it states "For Terminal Operations?"

[fol. 1086] A. Well, that's the distinction between the regular operations we have been talking about and operations where the cargo has been placed in the terminal at these rates which you have just quoted.

Q. How does the Board of State Highway Commissioners differentiate as between the so-called penalty and bulkhead basis, on the one hand, and the terminal operation basis, if we may so call it, on the other hand?

A. I don't quite understand your question.

Q. Well, in other words, I understand from your testimony that there are certain instances where the penalty in the bulkhead basis does apply at both the Golden Gate and State Terminals?

A. That's right.

Q. Yet on page 22 these same facilities have a schedule of rates for terminal operations. Now, will you please differentiate between those two schedules and how they would be applied?

A. Terminal operation is an operation dealing with cargo which has been purposely placed in the terminal on these rates. It is so stated by the shipper.

Q. And——

A. (Interrupting:) To remain there for some length of time.

Q. And the shipper makes application to whom?

[fol. 1087] A. He makes application to the Chief Wharfinger.

Q. To the Chief Wharfinger?

A. Yes.

Q. Does it also often happen that he makes application to the State Terminal or the Golden Gate Terminal?

A. That I don't know, but I—that is, I can't be sure of their operations. I know very little about their operations. However, I think that is a fact: That the shipper then makes arrangements with the operators of that terminal to handle the goods, check them, clerk them, and one thing and another.

Q. And in those instances does the State or Golden Gate Terminal, in turn, request of you the application of this basis of charge?

A. Yes. They take that up with the Chief Wharfinger.

Q. When was this basis of charge at the so-called two terminal operations made effective, Mr. Gates?

A. Well, the Pier 56 or the State Products Terminal was made effective before I went to the Harbor. I don't know the exact year.

Q. Prior to 1927?

A. Yes.

Q. The effective date on the Golden Gate Terminal, I believe, was 1934?

A. That is my best recollection.

[fol. 1088] Q. What was the reason in 1927 or prior thereto that the Board of State Harbor Commissioners found it necessary to depart from their long established practice at the other piers in setting up this rate structure at the State Products Terminal?

A. Well, it is my understanding that facilities were provided on the East Bay that provided this service; but the Board of State Harbor Commissioners, desiring at all times to provide all types of service, every service required in a major port, felt that they must do the same thing also to meet the competition from the other side of the bay.

Q. And in 1934 they found it necessary to devote Pier 45 to the same type of competitive service?

A. That's right.

Q. And how did you arrive at the basis of charges which are shown for these two facilities for terminal operations?

A. I can't tell you about the first one, because I wasn't there, but I think the charges were arrived at more or less just from the fact that similar charges were in effect in other places; to make the charges comparable with the charges that were made in other ports and other terminals.

Q. Well, do you mean particularly the East Bay Terminals or at other ports on the Pacific Coast?

A. East Bay Terminals.

Q. And have you found these rates to be competitive with [fol. 1089] your East Bay Competitors with respect to holding traffic at the two facilities?

A. These rates that now apply?

Q. Yes, sir.

A. I don't know that they are. There have been so many changes in the rates at the East Bay Terminals that I haven't had time to keep track of them.

Q. But regardless of all those things, the Board of State Harbor Commissioners since prior to 1927 have made no change in this general merchandise N. O. S. rate structure as outlined here?

A. I think not. I don't remember of any.

Q. The next item in your tariff, to which I call attention, is on pages 22 and 23, which provides a scale of rates on specific commodities under the heading "Fertilizer and Fertilizer Material," in which some twenty odd items are

enumerated. When was that item first published, Mr. Gates?

A. Oh, I can't give you the exact date of that. I imagine maybe a year and a half or two years ago.

Q. A year and a half or two years ago?

A. I am only guessing, but it was about two years, I think.

Q. What was the reason that the State Harbor Board found for the first time it necessary to publish specific rates on named commodities?

A. Well, we found that the rates on those commodities [fol. 1090] had been reduced on the East Bay—I forget the exact amount—but I think it was put on a daily basis, but it was comparable to this rate.

Q. And has the publication of these rates on these specific fertilizer commodities resulted in the Board of State Harbor Commissioners retaining some of the traffic to their facilities?

A. Yes. We would have lost a lot of it that we had and were in the habit of getting, if we had not cut the rates to meet the other side of the Bay.

Q. You will note on page 23 the words "Fertilizer Compounds or mixed fertilizers." Can you tell me whether that includes peatmoss?

A. No, I can't.

Q. If the consignee contended that under that term peatmoss was embraced would you grant the rate shown?

A. I don't know. I would have to find out whether it belonged there or not.

Mr. Graham: Mr. Differding, can't we ask him what the rate on Peatmoss is?

Mr. Differding: That was going to be my next question.

Mr. Graham: I beg your pardon.

By Mr. Differding:

Q. Would you answer that question, Mr. Gates?

[fol. 1091] A. No, I can't. I am not familiar enough with the detail of this to tell you just exactly what belongs under that specific rate. Maybe someone else from the Harbor can. I don't know.

Q. Possibly Mr. Geary?

A. Possibly Mr. Geary.

Q. Now, the rates shown there, as I understand it, were again on a period basis, and designed specifically to meet your East Bay Competition, is that correct?

A. That's right.

Q. Wouldn't it have been a fact that you would have more precisely met that East Bay competition if you had had your charges on a per ton per day basis; similar to what you have for the steamship companies for wharf demurrage when they exceed the free time in the assembling of cargo?

A. It might have been, I don't know.

Q. Well, it is true, is it not, Mr. Gates, that if your charge across the bay, which I believe if I am correct, was 1½ cents per day at the time you published this item, if you had published a similar amount you would have met them precisely?

A. Yes, that is right. But it hasn't been the policy of the Board to go to daily rates except where our cargo doesn't remain 30 days. This is a short period of time that has to be covered with a short time rate.

[fol. 1092] Q. Will you please explain why the Board has not seen fit to do so?

A. Well, I think one reason for it is the manner of administration and the expense of keeping books every day. Furthermore, I think that the rate over a period of time will work out just about the same on a monthly basis as it will by a regular shipper—as it will on a daily basis. In other words, it might be that a shipper on a daily basis will pay, say, two cents per ton, would pay 30 cents for a 15-day period, where he would pay us 30 cents. On the other hand, on a 2-cent per day basis for 60 days he would pay—I mean, for 30 days he would pay 60 cents and still he would pay us 30 cents. We believe that those charges are small enough that it isn't necessary to break them up so fine, and I think they would work out just about even anyway.

Q. And it has been the position of the Board of State Harbor Commissioners that with the single exception of outbound cargo which remains on assigned space longer than the free time all other charges for wharf demurrage, whether penalty basis, bulkhead basis or terminal basis, the storage facilities should be on a period basis?

A. Yes, that has been the situation.

Q. They have not seen fit to depart from that even in the face of, may we call it, severe competition from the East side of the Bay?

[fol. 1093] A. That's right.

Q. At the top of page 22, Mr. Gates, is stated the charges applicable to the Islais Creek Grain Terminal and name as the toll and demurrage rates applicable to grant. Can you state the basis of those charges?

A. No, I cannot.

Q. They were in effect long prior to 1927?

A. I think there was some change made in them subsequent to that time; probably eight or nine years ago; slight change.

Q. What was that made in?

A. I think it was made in the rate.

Q. In the rate?

A. In the rate after the first 90 days; yes, after the first 90 days.

Q. But the period basis as there outlined has not been changed, is that correct?

A. No.

Q. Did you hear the testimony of Colonel Allin here yesterday, Mr. Gates?

A. I heard some of it. I didn't hear all of it.

Q. Did you hear his testimony with respect to his understanding that not only the East Bay Terminals but the Board of State Highway Commissioners were in certain instances waiving wharf demurrage charges against vessels when the vessel was delayed in the ordinary course of its business?

[fol. 1094] A. Yes, I heard that statement.

Q. I will ask you, Do you know of any instance since you were first employed by the Board of State Harbor Commissioners where wharf demurrage charges have ever been waived under such condition?

A. No, I do not. The changes of the Board of State Harbor Commissioners, as contained in the tariff are assessed uniformly at all times. I might go farther and say that all of our accounts are audited by the State Department of Finance. All of our charges are audited, and only recently that department has checked up on our tolls. It has checked up on our demurrage charges and has told us that they find that it is a hundred per cent. The wharfingers haven't

missed anything. Every charge that we make is subject to check and is checked and audited by the Department of Finance at Sacramento.

Q. Do you know of any cost studies having ever been undertaken by the Board of State Harbor Commissioners with respect to securing a basis for determining wharf demurrage charges of any character?

A. I do not.

Q. Assuming, Mr. Gates, that this East Bay competition was not present, would the Board of State Harbor Commissioners cancel out their present storage rates applicable at the State and Golden Gate Terminals?

A. I don't know that. I can't answer that question. It is [fol. 1095] something that would have to be determined by the Board of State Harbor Commissioners.

Q. Would it be your recommendation that they do so?

A. I don't know what my recommendation would be without some study of the situation.

Q. Do you believe that the bases of charges for merchandise N. O. S. and fertilizer and fertilizer materials are on a depressed basis?

A. I don't know. I haven't made any study of it.

Q. Well, in any event, you did put them in to meet East Bay Competition regardless of what it was?

A. That's right.

Q. How low that competition happened to be?

A. That's right.

Mr. Differding: I think that is all I have of Mr. Gates.

Examiner Basham: Any questions?

Cross-examination.

By Mr. Somers:

Q. Mr. Gates, in connection specifically with the operations of the Islais Creek Grain Terminal, let me ask you this: When does demurrage start?

A. It starts—let's see. I think after 20 days free time.

Q. Do you notify the consignees of grain of the due ar- [fol. 1096] rival of their grain at the Islais Terminal?

A. Now, Mr. Somers, the details in connection with that I think I will have to leave with Mr. Geary, who has charge of the wharfingers, and who handles those details out there.

Q. You must be familiar with some of the practices there.

Do you know anything about the issuance of any document that might be used as a warehouse receipt or for collateral purposes being issued?

A. I do not.

Q. Do you know whether the Board issued such documents?

A. The Board does not.

Q. You know, do you not, that the law specifically prohibits the State Board from issuing warehouse receipts?

A. I know that the law prohibits the Board from acting as bailee.

Q. You have not, then, delegated powers to anybody else to issue warehouse receipts on grain arriving at the Islais Terminal?

A. No.

Q. In connection with the free time period now 20 days, is it a case of your being responsible for initiating this extension of time which was once ten days?

A. No, I don't know who to blame for that, Mr. Somers. I don't know who was responsible for the change or when it was made.

[fol. 1097] Q. Are you familiar with the grain tariff that was in existence in 1925?

A. No, I am not.

Q. You must have it of record in your office. You don't recall about a series of charges starting in with ten days free time, 15 cents for the succeeding 20 days, then two periods of 30 days each at 25 cents per ton, then a period of 30 days at 7 cents a ton, and then a period of seven consecutive 30 days at 4 cents per ton?

A. I know that changes have been made, and I know that those were the rates in effect at one time before I went to the Harbor.

Q. Do you recall about an amendment that was made in your rates effective July 1, 1928, when you increased those demurrage rates so that in lieu of the 7 cents per ton per day for one period and four cents per ton—I mean, seven cents per month for one period and four cents per ton for several successive 30-day periods you substituted 10 cents for 30 days?

A. Yes. I know there was a substitution made about that time, yes.

Q. Have you ever stopped to figure, or did you at that time, that during what we call a season, beginning June 1 of one year and and ending on May 31 of the succeeding year, that these charges for wharf demurrage could total [fol. 1098] $1.55 per ton?

A. You mean under the old rate?

Q. Under the old rate.

A. I haven't figured this out, no. But that is possible, yes, of course.

Q. You will recall that in the amendment of July 1, 1928 you provided that the schedule should cease at the end of May 31st following the arrival of the grain?

A. Yes, I do.

Q. And that was in line, was it not, with the practice of seasonal storage on grain in grain warehouses throughout the state?

A. Yes, that's right.

Q. Now, when your tariff was amended as now in effect, you abandoned the idea of May 31st as a seasonal landing, did you not?

A. Apparently so, yes. It covered a year—and, by the way, I don't know—I am not sure that the provision before this present provision was inserted covered any specific time; that is, any particular month. It may have, but I am not sure of it. My best recollection is that it read something like it does here now. In other words, it covered a period of a year, but not commencing at any one time or the other. Now, I may be mistaken, but that is my best recollection.

[fol. 1099] Q. You are referring now to this amendment that I referred to myself, effective July 1, 1928? You do not believe that the time was limited to May 31st next following date of arrival?

A. I say, to the best of my recollection it was very much the same as it is at the present time, but if not, the tariff would be the best evidence.

Q. I should like to show you the booklet which I have in mind and which I secured from your office, effective December 1, 1925, with a page inserted commencing July 1, 1928. I would like to have you read the three lines following the initial schedule there.

A. "Demurrage rates beyond the above period shall be 10 cents per ton for each 30 days or fraction thereof, pro-

vided, however, the maximum time for any shipment should not exceed beyond the last day of May next following its arrival."

Q. So, as I stated before,——

A. (Interrupting:) The month is stated.

Q. (Continuing:) —it is a fact that at one time you followed the practice throughout the State in making seasonal storage rates, but now you have abandoned that plan; is that right?

A. Well, I can't say that I am very familiar with the seasonal rate practice of the warehouses. However, I am [fol. 1100] willing to take your word for that, Mr. Somers. These changes were made, yes.

Q. I should like to read for the record, Mr. Gates, a short paragraph, four lines, from a report of the Board of State Harbor Commissioners for the Port of San Francisco for the fiscal year ending June 30, 1930, and ask you if this is not correct:

"The Islais Creek Grain Terminal is 1250 feet long and 220 feet wide with adequate wharf space and is equipped with up to date cleaning and grading machinery. This terminal is given over entirely to the handling of grain for export."

Is that correct?

A. I think that's the correct statement.

Q. Is it a fact that the terminal is now so used entirely for export movement of grain?

A. Yes, I think that's right; at least that is the intention.

Q. Are you not aware of the fact that grain is arriving there continuously by rail and truck?

Q. And it moves out also by rail and truck?

A. Well, that may be; some of it, I don't know. My understanding was that, of course, grain came in there and it was cleaned and sometimes screenings and that kind of thing was moved out, which could not be shipped, of course; [fol. 1101] could not be exported it was moved out of the terminal by rail or truck.

Q. Are you not aware of the fact that there has been a heavy movement out of this terminal by rail to the Mid-continent area of the United States for growing purposes?

A. No, I am not sure of that, Mr. Somers.

Q. I think you testified last week something about the operations of the Islais Creek Grain Terminal Corpora-

tion and that they rented from the Harbor Board what might be termed an island in the approximate center of the terminal, some 50 feet square with a tower-like structure which was constructed by the State Board, for which they paid $250 a month, and in which they conducted cleaning and grading operations. Is that right?

A. Yes. I am not sure of the area, but there is certain space used for cleaning and grading and for office space, and for which they pay a rental, I believe, of $250 a month.

Q. Grain is contained in that particular area, and while grain is contained in that particular area is there any wharf demurrage assessed?

A. To my best knowledge and belief, there are tolls and wharf demurrage charges on all of the grain that goes into the terminal, no matter where it is in the terminal.

Q. Within the past few years there have been some more improvements constructed in the terminal mainly for the [fol. 1102] purpose of storing or handling grain in bulk. Are you familiar with that situation?

A. Yes, sir, generally.

Q. Who constructed the bulk bins to the terminal?

Mr. Kilkenny: Now, Mr. Examiner, is that material? I object to that upon the ground it is wholly immaterial.

Mr. Somers: I think I am entitled to know just what the operations are down there.

Examiner Basham: Objection overruled.

By Mr. Somers:

Q. Will you tell us who constructed the bins?

A. Well, I can't tell you precisely what particular part was paid for by the Board of Harbor Commissioners or paid for by the operators; but, generally speaking, the Board of State Harbor Commissioners, have paid for any work that was done on the structure and the operators of the terminal, have paid for all machinery and things of that kind.

Q. The capacity of these bins is something like 2000 tons is it not?

A. I think so, but I couldn't tell you.

Q. Are you of the opinion that grain, while contained in these bins, is subject to your charges of bulkhead demurrage?

A. Yes, I am; or, rather, demurrage; not bulkhead demurrage.

Q. Wharf demurrage. Is there any rental paid the State Board for the use of these bins?

A. For the use of the bins?

[fol. 1103] Q. Yes.

A. No. All the rental we get from them—as I say, I think they are $250 a month—and it covers the space upon which the machinery—cleaning and grading machinery and the offices are.

Q. Did the State Board expend approximately $280,000 in the construction of these bins?

A. I couldn't answer that without reference to the records.

Q. Have you any idea as to the approximate amount?

A. No, I don't know that we spent any, Mr. Somers. I would have to refer to the records.

Q. In the receiving of grain at the terminal, who determines what grain shall be received and what grain shall not be received?

A. Well, the Board of State Harbor Commissioners, if any necessity arises, can determine that, and that is that any grain will be received when there is room for it.

Q. Is it not a fact that the Islais Creek Grain Terminal Corporation has exercised the right, or at least has performed the act, of declining to receive grain for certain periods?

A. Have never heard of it.

Q. Do you not know that there has been at times a complete blocking of all space down there because of the large quantity of grain on hand?

[fol. 1104] A. Oh, of course, as I say, they couldn't receive any more grain if the facility was full.

Q. Then any embargo that might be declared down there would be declared by the State Board on the reception of grain?

A. No, not necessarily by the State Board. But it seems to me it wouldn't be necesary to declare an embargo if the facility was full. It would be perfectly obvious you couldn't put any more in.

Q. Has it not been the practice down there at times to declare an embargo on track receipts of grain?

A. Not to my knowledge.

Q. Can you tell me anything about the capacity of the Islais Creek Grain Terminal Corporation's area there?

A. No, I can't. I am not familiar with it.

Q. Is it not a fact, if I may refresh your memory, that there has been at times over 50,000 tons of grain on wharf demurrage there at one time?

A. I couldn't say how much exactly.

Q. Does that sound unreasonable?

A. No.

Q. When it comes to vessels calling at the Islais Creek Terminal for loading this grain that is on wharf demurrage, who decides when and to what extent vessels may call to take such cargo?

A. They have to get an assignment from the Chief Wharfinger.

[fol. 1105] Q. Isn't it, as a matter of fact, the privilege of the Islais Creek Grain Terminal Corporation to decide when there will be vessels come to that dock to receive shipments of grain?

A. No. But if they have shipments of grain to go out, and there is a vessel to take it, we wouldn't interfere with it.

Q. So that if there were two vessels to go out at the same time, who would determine which one of the vessels would receive such cargo?

A. The Chief Wharfinger.

Q. Isn't it a fact that they run that grain terminal to suit themselves and they will decide what grain will be received and what vessels will call and when?

A. No, I would say not.

Q. Isn't that a matter of common knowledge, that the terminal is so operated?

A. No, no, not to my knowledge. The terminal is owned by the Board of State Harbor Commissioners which has complete control of it, and if there are any practices down there that the Board of State Harbor Commissioners do not like they could put a stop to them at any time. No complaints have ever come to my notice of the character that you are mentioning.

Q. Do you like the practice of the Islais Creek Grain Terminal Corporation issuing negotiable instruments for grain that is on wharf demurrage in your property?

[fol. 1106] Mr. Kilkenny: Just a minute, Mr. Examiner. That is assuming something not in evidence. It is not proper cross examination. There is no evidence on that fact at all.

Examiner Basham: I don't think it makes any difference whether he likes it or not. The objection is sustained.

By Mr. Somers:

Q. Then I don't think I get it clear in my own head. Is it known by the State Board that warehouse receipts are issued by anybody for grain resting on Islais Creek Terminal?

A. I have never seen one. I don't know, Mr. Somers. There may be, but I don't know. I have never seen one.

Q. If it should be proved to you that such is the practice would the Board approve of the practice?

A. I don't know that the Board would have anything to do with that. I mean, I don't think it would be a matter that would concern the Board as to what the owners——

Q. (Interrupting:) Would it not be delegating certain powers——

Examiner Basham: Just a minute. What bearing does that have on the issues in this case, Mr. Somers?

Mr. Somers: The bearing is that there is a terminal operating here contrary to law.

Examiner Basham: What law?

Mr. Somers: The Act of 1921.

Examiner Basham: We are talking about the Shipping [fol. 1107] Act of 1916.

Mr. Somers: I know, but contrary to the laws of the State of California.

Examiner Basham: I don't think that is relevant in this proceeding. It probably would be in a State proceeding.

Mr. Somers: I can't argue that point, Mr. Examiner, but I thought that we were here to uncover unfair practices.

Examiner Basham: We are here to determine whether or not these practices violate the Shipping Act of 1916, and not whether they violate any California statutes.

Any further questions?

Mr. Somers: I think that is all.

By Mr. Vaughan:

Q. Mr. Gates, do I understand correctly that the Golden Gate Terminal Company and the State Terminal Company are the only terminals on this side of the Bay that issue warehouse receipts?

A. I don't know that they issue warehouse receipts. I have never seen one of them.

Q. The Board of Harbor Commissioners in connection with any wharf demurrage or bulkhead storage do not issue any kind of receipt that is used as collateral for bank loans, does it?

A. Not that I know of. Well, I will say, "No."

Q. What kind or class of commodities to your knowledge [fol. 1108] are stored at Golden Gate Terminal or the State Terminal Company?

A. Oh, fertilizer and cotton sometimes. I have seen cherries in barrels, canned fruit goods, dried fruits, and things of that kind.

Q. Do either of the terminals actually store general commodities?

A. No, I don't think so. There are others that could answer that question better than I can, but I don't think so. I think it is usually large lots of one particular commodity.

Q. Is there any restriction which the State Board of Harbor Commissioners has imposed in connection with the license to either of these companies that would prohibit them from handling any article of commerce that might move over their terminal properties?

A. I don't know of any restriction that has been exercised so far.

Q. To your knowledge, how long have individual lots of freight remained in storage at those two terminals under wharf demurrage rates?

A. Oh, many months, I guess.

Q. Do you know whether or not Golden Gate Terminal Company performs free handling on goods to or from storage piles?

A. No, I do not.

[fol. 1109] Q. What would your answer be with respect to State Terminal Company?

A. Well, I don't know, but I don't think so. I think they get a charge for every service that they perform.

Q. They get a handling charge?

A. I think so, yes.

Q. No handling charges are assessed on cargo transshipped between ocean carriers, are they?

A. I can't answer that question. The Board of Harbor Commissioners has no handling charges.

Q. The Bulkhead storage rates are lower, are they not, than the rates concurrently charged by public warehousemen in the City and County of San Francisco, Mr. Gates?

A. I am not familiar with the public warehouse charges.

Q. You do not know that?

A. No, I don't know.

Q. Is it not true that the tariffs of the component members of the warehousemen's Association of the Port of San Francisco are mailed to your traffic manager?

A. Probably so.

Q. But you have never seen them?

A. No, I have no knowledge of them.

Q. To your knowledge, has either the State Terminal Company or Golden Gate Terminal Company stored any sugar at their respective terminals on behalf of Spreckels Sugar Company under wharf demurrage rates?

[fol. 1110] A. I think so.

Q. And the wharf demurrage revenue on that sugar has gone to the State Board of Harbor Commissioners, has it?

A. That is right.

Q. And the only revenue that the terminals have received has been their handling charges?

A. That is right.

Q. In connection with that particular sugar, do you know how long any particular lot remained in storage under wharf demurrage rates?

A. No, I can't answer that question without the record.

Q. Do you know whether or not Golden Gate Terminal Company has ever stored any Swedish Newsprint rolls on behalf of the San Francisco Chronicle?

A. I think they have.

Q. Have you any knowledge as to how long those particular lots, or any particular lots of the newsprint rolls have remained in storage?

A. No, not without the records, Mr. Vaughan.

Q. Do you know whether or not odd-lot deliveries are made on that newsprint?

A. I couldn't answer that question.

Mr. Vaughan: You don't know. That is all.

By Mr. Graham:

Q. Mr. Gates, on these demurrage rates, and used in con-
[fol. 1111] nection with your free time, do you find that

those rates effectually move the cargo off the docks and keep your docks clear?

A. I think so, generally speaking.

Q. In other words, they are high enough for that purpose?

A. I think so.

Q. Do you have any provisions in your tariff at all for so-called extension of free time cases of emergency or delays of the vessel?

A. No. Our free time can be reduced, but not extended.

Q. Am I correct in my understanding that you testified that demurrage had not been waived within your knowledge on these properties where some emergency has existed on occasion?

A. I have no recollection of its ever having been waived.

Q. Well, you would know if it had been waived?

A. I think so.

Q. It would go to you?

A. Yes, it would go to me, but I haven't any recollection of it having been done.

Q. You have had plenty of applications for a waiver?

A. Oh, yes, yes.

Q. In a case of delay of the vessel who pays this demurrage? The vessel or the cargo?

A. The vessel.

Q. In other words, you look to the vessel for demurrage [fol. 1112] in all cases?

A. No, only with outgoing cargo where it is held there because the vessel is late.

Q. Only in that one case?

A. That is the fault of the vessel.

Q. And in all other cases you look to the cargo?

A. Outgoing cargo; that is, I mean discharged cargo being moved off the piers we look to the cargo.

Q. This practice of bulkhead demurrage of yours is really in effect a limited storage, is it not?

A. I will tell you what it is: It is to meet conditions where cargo is on piers where it is to be either shipped out by water or by rail or by truck where the destination is not known at the time or where it is overlooked or something of that kind, and where there is no purpose in moving it and bringing it back to the pier again; only an extra expense. And it isn't the fault of the shipper and he

shouldn't be penalized. We don't consider that he should be penalized for it. Therefore, we ask what we feel is a u-ual charge for the space during that time.

Q. In other words, can we call it semi-storage, but not real storage?

A. Well, I have tried to explain it the best way I could.

Q. You have had cases where goods were shipped and taken down to one of your docks and, let us say, where the [fol. 1113] Public Health Service or Department of Agriculture refuses to let it be loaded on the ship, and those goods have remained on the dock for subsequent disposition?

A. Oh, yes.

Q. You use bulkhead demurrage charges in those cases?

A. Yes, I think so. I wouldn't be certain of any specific case. It would depend on the circumstances, but that would mean that the cargo could not be removed. It wouldn't be the fault of the shipper that he couldn't take it off.

Q. In any event, it is within the discretion of the Wharfinger as to what rate he shall charge and what will happen to it?

A. No. It has to be pretty much in accordance with this tariff here. He can't extend it.

Q. You do have a good many instances of cargo remaining on the dock which is not specifically covered by this tariff, such as this last one I gave you?

A. Yes; sometimes, yes; occasionally, but very seldom.

Q. In those cases the wharfinger used his discretion as to what is going to happen?

A. Usually the wharfinger takes it up with the Board of Harbor Commissioners in every case of that kind. There are very, very few of them; very few.

Q. And the Board determines the policy?

A. Yes.

Q. Let me ask you whether in placing goods on bulkhead [fol. 1114] demurrage those goods are moved about from place to place or from one place to another place on the dock when they acquire this status?

A. They may be, yes.

Q. Who has the determining voice as to whether the goods are in fact moved? Is that the wharfinger also?

A. Yes, the wharfinger can have them moved.

Q. And the cost of handling in those cases is borne by whom?

A. It is borne by the shipper, I presume.

Q. In every case?

A. It is not by the Board of Harbor Commissioners.

Q. In other words, you don't absorb that at all?

A. No, no, no.

Q. You don't have any labor, in fact, to perform those services, do you?

A. We do not.

Q. If the application is made by the steamship company they are the ones that perform the job, are they?

A. Well, I can't say whether the steamship company or the shipper. That might be an arrangement between the shipper and the steamship company, but I believe the shipper does in all cases.

Q. And you can't tell me who, in fact, bears the cost?

A. I should say the shipper.

Q. But take the case that I cited to you, where goods are [fol. 1115] sent down to the dock for shipment abroad and for reasons beyond the carrier's control they can't be shipped, which is the case of prunes that existed a couple of years ago that were bound for Italy. The carrier's couldn't take those prunes. Would the cost of moving those prunes be on the ship in that case?

A. I would say "No." I would think that they would be on the shipper.

Q. It goes against the cargo, in other words?

A. I think so, yes.

Q. Do you have a system of policing the docks or, let us say, inspecting the docks to determine the length of time the cargo has remained on in each case?

A. Oh, yes.

Q. In other words, that is done through your wharfinger's office?

A. That's right.

Q. And they do that daily?

A. Yes, sir.

Q. You don't file your tariff with any regulatory body at all, do you?

A. We do not.

Q. And it is your contention that you are not subject to the regulation of any regulatory body?

A. That's right.

[fol. 1116] Q. And you can change your tariff at will without notice, can't you?

A. That's right.

Q. And that is done by the action of the Board of Harbor Commissioners?

A. That's right.

Q. They have absolute authority in that respect?

A. Yes, sir.

Q. In connection with these rates on wharf demurrage and bulkhead demurrage—bulkhead storage—has any study been recently made to determine those rates are reasonably compensatory in any case?

A. We have made no such study.

Q. As I understand you, you do not know yourself the basis on which any of these rates which are in your present tariff was established?

A. No, I do not. But when you talk about them being compensatory, all I know is that the Board of State Harbor Commissioners have operated the Port of San Francisco for something like 76 years and they have never had one cent of money from taxes or any other source except their revenue, and they have paid all their expenses and all their bonded indebtedness and sinking fund charges.

Q. But, of course, they don't pay taxes to anybody?

A. No, they don't pay any taxes.

[fol. 1117] Q. Do you consider that the so-called penalty demurrage beyond the free time should or should not be reasonably compensatory; just that charge?

Mr. Kilkenny: Mr. Examiner, I object to that question upon the ground that the powers of the Board of State Harbor Commissioners for the San Francisco Harbor are prescribed by the statutes of the State of California. The statutes of the State provide that the rates that are charged shall be sufficient to raise enough money to pay the expenses of the Board of State Harbor Commissioners, and they are without power to levy any more charges than are sufficient to carry out those purposes.

Examiner Basham: I think that is a point that may well be left for the brief.

Off the record.

(Remarks outside the record.)

Examiner Basham: On the record.

By Mr. Graham:

Q. Mr. Gates, in connection with the subject of demurrage, do you consider that the rate established by you is such a rate as without regard to it being reasonably compensatory attaches a penalty for leaving the cargo on the dock?

A. You speak of the 25 cents for five days and 50 cents for the next five days?

Q. Yes.

[fol. 1118] A. Yes. I think the purpose of that rate is to force cargo off the docks.

Q. Without regard to whether you are going to get any income from that source or not?

A. No. Following Mr. Kilkenny's statement, to the effect that the Board of State Harbor Commissioners must raise sufficient money to pay all their expenses and cannot raise any more than that, I think that these general purposes of the Board under those circumstances has been to spread their charges equitably over the front to all users of the port.

Q. To go on to the question of bulkhead demurrage, that rate is established at a figure which, in your opinion, is reasonably compensatory for the service rendered and the space occupied, I assume?

A. I don't know that.

Mr. Graham: You don't know it?

Mr. Kilkenny: I want to object to this line of questioning.

Examiner Basham: You have already objected to all of his testimony.

Mr. Kilkenny: For the reason that the manner of levying those rates and fixing those rates are established by law, and whether or not it compensates the State for the structures that are built down there is wholly immaterial. All that they have to consider and the law compels them to con-

[fol. 1119] sider is whether they are raising sufficient money to operate the port, and they can't raise any more money than that. It is not based upon competition at all. I object to any further questioning along that line.

By Mr. Graham:

Q. Mr. Gates, in the copy of exhibit 64 which I have it shows what purports to be an increase in the toll rates. When was that put into effect?

A. That went into effect December 1st of last year.

Q. And that change of rate has not been filed with any regulatory body or published at all except in your own schedule here?

A. That's right.

Q. And I presume that the reason for increasing that was to increase your revenues because you found it necessary to do so?

A. That's right.

Q. It is a fact, is it not, that in the years gone by up to the construction of the Bay Bridges that the Board of State Highway Commissioners have enjoyed a very considerable revenue from the operation of the Ferry Building?

A. That's right.

Q. And that since the construction of the bridges, let us say there has been at least a diminution of that revenue?

A. That is right.

[fol. 1120] Q. To what extent we don't know yet?

A. That's right.

Q. And with that diminution of the revenue will you not be faced with a condition where you will have to increase your rates to comply with your legal obligation to affix rates sufficient to satisfy your indebtedness.

Mr. Kilkenny: Now, just a minute. I think that question is a little uncertain as to what rates are spoken of. I might mention, of course, that there are various other income-producing revenues on there besides rates of storage and demurrage.

Mr. Graham: If that is a fact, I think the witness can tell us that thing, Mr. Kilkenny. I just want to know if, as a result of the diminution from the Ferry Building, you are not in an entirely different position than you have found yourselves in in the past.

A. We have found it necessary to increase certain rates.

By Mr. Graham:

Q. And that was tolls in this case?

A. That was tolls, yes.

Q. Have you made a survey of your prospective business to determine whether that toll increase will take care of the loss of revenue that you had from the ferry building?

A. We don't know what our loss is going to be yet. There are certain other changes that may or may not take place, [fol. 1121] and the Board has plans to build up that revenue to make use of the ferry building,—to make it produce.

Q. These tariffs that are filed by the two terminals, the State Terminal and Golden Gate Terminal, are they approved by the Board of State Harbor Commissioners before they are filed?

A. No.

Q. In other words, they are their own private corporate tariffs?

A. Yes. They submit those tariffs to the Railroad Commission, I believe.

Q. That is right. And so far as the Harbor Board is concerned, they have nothing to do with it?

A. We haven't taken any part in it. We could have something to do with it, I believe, but there is no necessity inasmuch as they have been regulated by the Railroad Commission.

Mr. Graham: I think that is all.

Mr. Townsend: I have some questions.

By Mr. Townsend:

Q. Mr. Gates, the Port of San Francisco consists of a series of finger type piers or docks spread over a considerable area of the water front, does it not?

A. Yes.

Q. How many of those piers are there?

A. Oh, there are about 43, I think, of those finger piers; 42 or 43.

[fol. 1122] Q. About 43. And over how long an area along the water front are they spread, approximately?

A. I would say about five miles, approximately.

Q. About five miles?

A. Approximately; perhaps a little less. I am only guessing.

Q. How many employees approximately does the State Board have to determine the amount of cargo that is on all of those docks?

A. Twenty-two or three.

Q. Twenty-two or twenty-three employees?

A. Wharfingers.

Q. What did you say?

A. Wharfingers.

Q. Wharfingers. And that would mean approximately one wharfinger for every two docks or so?

A. Some of them, depending upon the activity at the docks,—some of them might have one and another one might need two or three.

Q. What handling operations, if any, are performed by the employees of the State Board with respect to this cargo?

A. On the regular piers, you mean?

Q. Yes.

A. None.

Q. Then I would understand that the State Board does not check the cargo either in or out of the regular piers? [fol. 1123] By "Regular piers" I mean excluding the State Terminal and Golden Gate Terminal Docks?

A. I don't quite understand your question, Mr. Townsend.

Q. Let us consider now until I state to the contrary that we are just discussing these so-called assigned piers.

A. Yes.

Q. And that would exclude the State Terminal and Golden Gate Terminal Piers?

A. Yes.

Q. And the Islais Creek Grain Terminal?

A. Yes.

Q. With respect to those assigned piers, then is it correct that the Employees of the State Board do not do any checking of cargo on or off?

A. Oh, the wharfinger takes care of that. The wharfinger knows what the cargo is on the piers.

Q. One wharfinger, then, may handle two or three docks; runs around and checks all of the cargo?

A. Oh, no. He has plenty of records to go through. The steamship manifest he has, and then he checks the cargo that is on the piers that goes over the free time.

Q. Do you know how many employees are required by the East Bay terminals for checking cargo on and off their docks?

A. I do not.

Mr. Kilkenny: I submit that it is wholly immaterial.

[fol. 1124] Examiner Basham: He said he didn't know anyway.

By Mr. Townsend:

Q. You say that the wharfingers go to the steamship companies for their records of what cargo is on the dock, is that correct?

A. I didn't say that. I said they had access to the records.

Q. How does the State Board determine how much cargo is on the docks for the purpose of assessing wharf demurrage?

A. The wharfinger determines that.

Q. How does the wharfinger determine that?

A. I will have to refer you to Mr. Geary for that. I can't give you the details.

Q. All right.

A. However, I will say that it isn't a large item at all. It doesn't amount to a great deal. There isn't a great deal of it.

Q. Wharf demurrage?

A. Wharf demurrage on the piers; not very much.

Q. Now, then, the operations of the actual handling of the cargo on these assigned docks are performed by the Stevedores or car loaders or unloaders, are they, primarily?

A. They are. The Board of State Harbor Commissioners performs no handling on the docks.

Q. Who performs the car loading and unloading on these docks?

[fol. 1125] A. Oh, various parties, I think.

Q. What types of parties?

A. Car loading companies, private companies, companies of private parties, probably.

Q. Does the State Board of Harbor Commissioners make any charge for the use of its docks by those car loading and unloading companies?

A. It does not.

Q. Who performs the stapling and stenciling and weighing operations on these docks?

A. Various private parties or companies.

Q. Does the State Board make any charge to those parties for the use of those facilities?

A. They do for weighing. There is a small charge for the privilege of weighing, and an office goes along with it.

Q. But not for the other services?

A. No, except they use space for equipment for doing their work, or something of that kind. We rent a little space to them.

Q. In other words, you charge them, if they occupy office or storage space on the dock, and that is all.

A. Yes, or a space to work in.

Q. If they go out on the floor of the dock and do some stenciling you don't charge for them?

A. No.

[fol. 1126] Q. You simply mean that if they have some space reserved exclusively for themselves you charge them?

A. That's right.

Q. When does the free time period commence in the case of outbound cargo?

A. Let's see! That commences when the first cargo is deposited on the pier.

Q. Is it that day when it is deposited, or 12:00, 1:00 A. M. of the next day?

A. No, it is the particular hour that it is deposited, I believe.

Q. You start computing from the hour when it is deposited on the dock?

A. I think that's right.

Q. Then the free time period continues as specified in your tariff, does it not?

A. Yes.

Q. And your demurrage charges commence after the expiration of the free time period?

A. That's right.

Q. On outbound cargo when does the demurrage or storage charge cease?

A. I don't quite understand your question. You haven't got to any demurrage charges yet in your questioning, have you?

[fol. 1127] Q. I said after the free time you charge demurrage charges, do you not?

A. That is right.

Q. How long do those demurrage charges continue? Is it until the time the cargo is actually placed aboard the

vessel, when the vessel starts loading or is it some scheduled sailing date?

A. No. I think it works this way: That the cargo after all is entitled the same as any other cargo to ten days free time, and that it is charged for the time it is there prior to the commencement of the free time, and that the free time ends when the vessel has finished loading.

Q. Well, I am not with you there. You say that the cargo is charged for time prior to the free time?

A. Maybe I had better let Mr. Geary explain that to you later on.

Q. All right.

A. I think that's right, but maybe he can explain it to you more clearly.

Q. Does the Port of San Francisco publish a sailing schedule?

A. We do not.

Q. Now, then, it is not clear to me how you determine when your wharf demurrage charges will be billed against the steamship company, because you said that the charge, as I understand it, was billed against the Steamship com- [fol. 1128] pany for the time when the vessel was late after the scheduled sailing date?

A. Yes, that is right.

Q. Will you please explain that a little more fully?

A. Against the steamship company.

Q. How do you determine the scheduled sailing date?

A. That depends entirely on when the steamer sails or when she arrives. We don't pay any attention to schedule. We pay attention to the actual hour that the steamer arrives at the pier, or leaves it.

Q. How do you determine, then, when to assess your demurrage against the shipper or the vessel?

A. You mean on outgoing cargo?

Q. Still outgoing.

A. I think I will let Mr. Geary give you the procedure on that. He knows more about that than I do.

Q. What absorptions does the Board of State Highway Commissioners make?

A. They make an absorption on a subsequent switch on the Belt Railroad in case the car is loaded for one or more piers. They also make an absorption on split cars from the State Products Terminal where cargo comes in on a truck,

for instance, and a truck load comes in and part of it is destined to one pier and part to another. However, there is very little of that.

[fol. 1129] Q. What is the amount of that switching charge from one dock to another?

A. Well, our rate is $4.00 for a loaded car.

Q. And how many switches may one car have that will be absorbed by the State Board?

A. Two. After paying the one switch, it provides for two subsequent switches, if necessary.

Q. Which are absorbed by the State Board?

A. Yes.

Q. Is there a maximum of two additional piers in connection with the truck movement that will be absorbed by the State Board?

A. I don't know. There has been so little of that. I think the cargo is separated at the State Products Terminal, so that it is one movement from there to a pier. There has been so little of it. I don't think it amounts to two or three dollars a month.

Q. Are there any other absorptions by the State Board?

A. The only other absorptions is on fresh fruit from the refrigeration terminal where the amount to be shipped is insufficient for a vessel to call.

Mr. Townsend: That is all, thank you.

Redirect examination.

By Mr. Scoll:

Q. Where would that shipment from the Refrigeration [fol. 1130] terminal move to?

A. It would move to another pier on the water front.

Q. How would it move? By truck? By car?

A. Sometimes by truck and sometimes it is loaded into a refrigerator car.

Q. And the absorption you referred to is the charge for the movement by truck or car?

A. Yes.

Q. I would like to ask you one or two more questions. You may have covered these before I got here, but they are only two or three. They were introduced as exhibits 3 and 4, forms of receipt which are issued by the Golden

Gate and the State Terminals. Do you know whether a similar form of receipt is issued by the Islais Creek Terminal?

A. No. I am not familiar with their procedure in regard to receipts; either of the terminals.

Q. Mr. Vaughan questioned you about sugar stored for the Spreckels Company. Where was that sugar stored?

A. There was some of it stored at Pier 45. I am not sure. There may be some at Pier 56. I haven't seen it myself.

Q. That would be either——

A. Either one of the terminals.

Q. Either Golden Gate or State?

A. Yes.

Q. And, similarly, for the newsprint held for the Chron-
[fol. 1131] icle at either of those two places, Golden Gate or State?

A. Yes.

Q. With respect to the notice which you give on tariff changes, the tariffs and charges that are published in your tariff, which is introduced as exhibit 64, may be changed by the Board without further notice?

A. It may, yes.

Q. Is that customarily done?

A. No. Any change of any importance is usually made in advance. The last changes, for instance, where the tolls were raised, I think that change was made more than 30 days before the effective date and the notices were sent out to everybody we knew.

Q. Therefore, notwithstanding the fact that you reserve the right to change the tariffs without notice, it is the policy of the Board to give a reasonable notice?

A. Yes, that's right, if it is going to affect anybody to any extent. For instance, a change may be made, or something new may be put in the tariff to cover a situation that has not been met before—one single change of verbiage or something of that kind—it wouldn't. But usually the Board gives sufficient notice to everybody.

Q. And that is the policy of the Board?

A. That is the policy of the Board, yes.

Q. Mr. Townsend asked you about space used by persons
[fol. 1132] who perform certain services and what charges are made against those persons. He mentioned stapling.

Where would such stapling take place normally? On one of your terminals?

A. I imagine it may take place on one of the terminals or possibly on one of the piers. I don't know.

Q. It would be on one of the transit sheds?

A. It might be. If some cargo needed stapling it might be done there.

Q. Would that be on space that was assigned to one of the steamship lines?

A. Yes.

Q. If that work takes place on space that is assigned to a steamship line is there any charge for that by the Board of Harbor Commissioners?

A. No. The only charge that we would make would be if the party doing the work rented space for himself to have the headquarters or some place for his gear or his equipment, or an office or something of that kind, then we would charge him the rent. But simply to go on the pier to perform a service to the shipper, we don't make any charge for it.

Q. So the only charge which you would make would be a rental charge for additional space which would be required by a person rendering that service?

A. Yes.

[fol. 1133] Q. And that would apply to such service as we have mentioned, and, in addition, weighing?

A. We do make a nominal charge of $10 a month for weighing, which allows the weigher to have an office and gives him the right to perform that service on the front.

Q. Do you give him any equipment to do that weighing?

A. No. He furnishes his own equipment.

Q. But you furnish him office space?

A. We furnish him office space.

Q. And that office space would be additional office space which was not already assigned to him by the steamship company?

A. That's right.

Q. With respect to car loading and car unloading, that is also performed, of course, on the terminal floor of the transit sheds?

A. That's right.

Q. And do you make any charge in connection with that?

A. We do not.

Mr. Scoll: That is all, thank you.

Recross-examination.

By Mr. Rohde:

Q. Mr. Gates, I believe you stated that demurrage charges were never waived in emergencies.

A. I meant by that that all demurrage charges were not waived. There are some demurrage charges made under [fol. 1134] any conditions, as you well know, Mr. Rohde.

Q. During the recent checkers' strike what rate of demurrage was assessed on cargo that was strike-bound.

A. So-called bulkhead storage; 12½ cents a week.

Q. And what was the duration of that strike?

A. Oh, I think approximately two months. I am not sure of the exact number of days.

Q. Will you accept my statement that it was 53 days?

A. Yes, I would.

Q. And that charge was assessed against the shippers, was it?

A. Oh, yes.

Q. Do you know if any corresponding charge was assessed on the other side of the Bay?

A. I do——

Mr. Kilkenny: Now, Mr. Examiner, I object to that question upon the ground that the Board of State Harbor Commissioners are limited in the matter of waiving charges entirely. It can't be done on account of the prohibition of our State Constitution which forbids the legislature to make a gift of public moneys or to authorize any——

Examiner Basham (Interrupting): You mean the law provides?

Mr. Kilkenny: The law provides.

Examiner Basham: But that does not mean that it is not done, does it?

[fol. 1135] Mr. Kilkenny (Continuing): —that the Board is without power to waive charges. He is examining the witness on a question of law.

Examiner Basham: Read the question.

(The question referred to was read by the reporter as above recorded.)

A. No, I can't prove that it was or was not. I don't know of my own personal knowledge.

By Mr. Rohde:

Q. Do you know if there was any discussion with the terminal operators in the East Bay or with the Port of Oakland relative to waiving any demurrage charges or collecting them?

Mr. Graham: I will object to the question.

Examiner Basham: Objection sustained.

Mr. Rohde: That is all.

Examiner Basham: Off the record.

(Remarks outside the record.)

Examiner Basham: On the record.

The Witness: I made the statement that the records of the Board of State Harbor Commissioners were subject to audit and are audited regularly by the State Department of Finance. Every charge that is made by the Board is audited to see whether it is in accordance with our tariff. Just recently the Auditor made a check of the demurrage situation on the piers——

[fol. 1136] Mr. Kilkenny: Just a minute! A check of what?

The Witness: Of the demurrage situation on the piers as to where the charges were being made correctly and fully, and advised us that they found that they were being made 100 per cent.

Examiner Basham: Didn't you state that before?

The Witness: I say, I just wanted to refer back to that record.

Examiner Basham: I thought you wanted to correct a statement that you made.

The Witness: No. I wanted to be sure to get something in there in regard to your statement.

By Mr. Rohde:

Q. Mr. Gates, is the Board of State Harbor Commissioners answerable to any other State Department or State Official for the proper observance of its tariff?

A. Our accounting is subject to the control of the Department of Finance—the State Department of Finance.

Q. Well, do you ever refer matters of interpretation to the Attorney General?

A. Oh, yes. The Attorney General is our legal advisor.

Q. Then would you say that so far as you are concerned

your tariff has the force of law the same as any tariff filed by any private operator filed with the California Railroad Commission?

[fol. 1137] A. I would. However, I am not a lawyer, Mr. Rohde.

Redirect examination.

By Mr. Differding:

Q. You applied this charge on the strikebound cargo uniformly on all the piers during the strike at that time?

A. Absolutely.

Q. I would like to call your attention to page 18 of Exhibit 64 under the heading "Free time for assembling cargo," paragraph (c), where the words "Weight or measurement, whichever will yield the greater revenue," do not appear. Am I correct that while the words do not appear the Board, as it does in the other provisions of the wharf demurrage section of Exhibit 64, the charges are applied on a weight or measurement basis.

A. Yes. I would say it applies just the same there by weight or measurement, whichever will yield the greater revenue, the same as in the other cases.

Q. Does the same answer apply over on page 20 under Condition No. 1, where again the words "Weight or measurement" are absent?

A. Oh, yes, I think so.

Q. There seems to be a little confusion in my mind, Mr. Gates as to the rates and periods of time which appear in Condition No. 1 on page 20, and the rates and periods which appear on page 18 in paragraphs B and C. You will note on page 20 the rates and periods are exactly the [fol. 1138] same as paragraph (b), which is limited to two trades, but different from paragraph (C) which is limited to three trades. Yet Condition No. 1 applies to all trades. What is your understanding of the application of the rates and periods indicated in Condition No. 1?

A. I think I will have to let Mr. Geary answer that question, Mr. Differding. I am not familiar enough with it.

Q. All right, thank you. Mr. Gates, is it not true that there has been some increase in your costs that may be charged providing a wharf demurrage service on your assigned piers, such as the increased cost of employing clerks in your administrative general offices, since 1935?

A. Oh, I think there have been some increases in the salaries paid employees, yes.

Q. Is it also true of the materials and office supplies required?

A. Well, I don't know that I can say that. I am not familiar with it.

Q. Who provides the cleaning of the docks where wharf demurrage or storage cargoes have been placed for a period of time, and the debris that remains after removal is on hand? Who does the cleaning?

A. You mean on the assigned docks, piers?

Q. Yes, first.

A. It is done by the steamship company.

Q. The steamship company performs the cleaning at their expense?

[fol. 1139] A. Yes.

Q. What is the situation at the two terminals?

A. The terminal operators do that.

Q. They do that?

A. Yes.

Q. I believe you previously stated that you perform no checking of the cargo in or out?

A. No, that's right.

Q. And the determination of the charges, whether or not on a weight or measurement basis, is done by the assistants to the Chief Wharfinger by actually checking the cargo or reviewing ships' manifests or both?

A. Yes, that's right.

Q. How about the furnishing of lighting facilities on these piers where wharf demurrage cargo is stored? Is the cost thereof borne by the assignee, the Steamship Company?

A. The Harbor Board itself provides a certain amount of lighting on the piers.

Q. Is it split, then, between the Harbor Board and the Steamship Company?

A. And any additional lighting or extra lighting is paid for by the steamship company.

Q. Has there also been some increase in your costs of operation by payroll taxes on your employees?

[fol. 1140] A. No. We have no payroll taxes.

Q. You have no payroll taxes. In addition to these assistants to the Chief Wharfinger do you also provide watchmen in all these piers who are there for fire protec-

tion purposes and prevention of theft of cargoes on wharf demurrage as well as in transit?

A. No. We are not responsible for the cargo and the steamship companies provide their own watchmen.

Q. They provide their own watchmen. Turn to this matter of leases, Mr. Gates, does the Board of State Harbor Commissioners have any industrial leases with lessees of properties under the juridiction of the Board?

A. We have a few leases, yes.

Q. Are any of those leases covering areas on the finger piers or the two terminals?

A. No, they are not.

Q. They are all in the rear of the piers or wharves?

A. Of the waterfront property, yes.

Q. Do you have any basis of charges on a square foot per month or other period of time to apply in connection with your finger piers or terminals other than that named in Exhibit 64?

A. Except for—I don't think the charge for office space is named in the tariff. That is an additional charge over and above the charge named in the tariff for space for cargo.

[fol. 1141] Q. Would you mind stating that charge? Is it on a square foot basis?

A. Yes; three cents per square foot per month.

Mr. Differding: That is all I have of Mr. Gates. I have some others of Mr. Geary.

Recross-examination.

By Mr. Graham:

Q. Just one question, if I may. Mr. Gates, these absorptions to which you referred in Mr. Townsend's questions, those are not filed nor are they contained in your tariff?

A. No, they are not in the tariff.

Q. What have you? Just a memorandum in your office?

A. No. They are done by resolution of the Board.

Mr. Graham: I see.

By Mr. Somers:

Q. Very briefly, Mr. Gates, the concession for performing services of unloading cars at the Grain Terminal, weighing,

piling, delivering, and so forth, is owned by the Islais Creek Grain Terminal Corporation, is it not? The concession has been granted that corporation has it not?

A. Yes, a concession has been granted that corporation.

Q. That corporation consists of three exporters of grain, does it not?

A. I can't answer that.

Q. You know something about the personnel of the cor-
[fol. 1142] poration, do you not?

A. Very little.

Q. Are you quite familiar with the fact that three important exporters secured this concession from the Board of State Harbor Commissioners?

A. No, I don' know that.

Q. Do you know that other exporters do not have the privilege of going on the dock and performing any services?

A. Oh, that is another matter.

Q. Well isn't it a fact?

A. Yes. I can explain that, I think. It is the same situation as it is with our other terminal. Somebody has to be responsible for the merchandise and the services. You can't let everybody go in there. You have to put somebody in charge of a terminal and hold them responsible for it; and that is the only way a terminal of that kind can be managed properly.

Q. Would it be possible for any other exporters to receive this concession in turn we will say, from the Board, or have the concession for a part of the term?

A. I don't know about that. That would be a matter for the Board to decide.

Q. Isn't it pretty much of a monopolistic situation so far as the present stockholders of the Islais Creek Grain Terminal Corporation are concerned?

[fol. 1143] A. I know nothing about the stockholders of the Islais Creek Grain Terminal Corporation. But I do know that the operations of that terminal are on the same basis as all the other terminals, and there have been changes from time to time in the other terminals. Somebody else operated them for a while, but it is necessary that some one person or some one organization have the control and the responsibility for operating a terminal. You can't open it up to everybody.

Q. You say it is just the same at the State Terminal and at the Golden Gate Terminal. The operators there are

warehousemen, are they not? They are not dealers in commodities?

A. I don't know that. They might be for all I know.

Q. Well, isn't it a well known fact that the operators there are public warehousemen and so scheduled and so listed in your office?

A. Yes. But that doesn't mean to me that they might want the owners of merchandise or something of that kind. That could happen.

Q. Well, isn't it a fact, to your knowledge, that the stockholders of the Islais Creek Grain Terminal Corporation are dealers in grain, exporters?

A. No, I don't know who they are. They may be, but I don't know who they are.

Q. Don't you know who the President is?

[fol. 1144] A. No, I do not, unless it is Mr. Bell. It may be Mr. Bell. I don't know. I usually talk with him about anything concerning the terminal.

Q. Is he not in the grain business?

A. I don't know that.

Q. Well, if you don't know, you don't know.

A. No, I don't. I don't know anything about the personal affairs of our tenant.

Q. Will you take my word for it?

Mr. Kilkenny: Mr. Examiner, I submit that the gentleman is not testifying.

Examiner Basham: I think you have exhausted his knowledge on that subject.

By Mr. Kilkenny:

Q. Mr. Gates, in fixing and regulating rates, dockage, wharfage, tolls, rents and other charges, the Board is regulated in its action by the terms of Section 3080 of the Harbor and Navigation Code, is it not, to the effect that it may collect an amount of revenue therefrom that it will enable it to perform the duties required by that part of the Code?

A. That is correct.

Q. And they are also limited by the provisions of Section 3084 of the Harbor & Navigation Code of the State of California which provides that a greater amount of money shall [fol. 1145] not in the main be collected pursuant to this part of the Code than it is necessary to enable the Board to perform the duties—

Examiner Basham (Interrupting): Mr. Kilkenny, can you not refer to that in brief? That is not a matter that has to be proven on this record.

Mr. Kilkenny: That may be true, but the question has arisen here.

Examiner Basham: You have stated it two or three times.

Mr. Kilkenny: I am asking him about specific provisions of law.

Examiner Basham: It does not have to be proven on this record.

Mr. Kilkenny: I have already asked the question.

A. Yes, that is right.

By Mr. Kilkenny:

Q. And now about that matter of waiver of wharf demurrage, I did not hear you well on that. You testified that no charges for wharfage or wharf demurrage were ever waived, is that correct?

A. To my knowledge.

Q. That is a matter regulated by law?

A. Yes.

Q. The Constitution of the State forbids it?

A. Yes.

Q. The Board has no power to do it?

[fol. 1146] A. That's right.

Redirect examination.

By Mr. Scoll:

Q. Mr. Gates, I want to ask you another question or two concerning this performance of services on the assigned piers and the renting of space. I am not entirely clear on that.

Examiner Basham: Go on and ask the question.

Mr. Scoll: Just a minute, please.

By Mr. Scoll:

Q. What space is rented to such people who might perform the services of stenciling, weighing and so forth? Is it just office space?

A. Oh, it might not be called "Office space;" little corral equipment.

Q. And any of that space would be rented at the rate of 3 cents per square foot?

A. No. It would be at least 4.2 — it might possibly be an arbitrary rental with a minimum.

Q. A minimum of what?

A. A very small space.

Q. It would be on a square foot basis with a minimum of $10.00?

A. Yes.

[fol. 1147] Q. How do the rents range or run per square foot? What is the range?

A. 4.2 cents.

Q. Up to what?

A. That is the top, except there is a minimum for a small space.

Q. Do you have any rule or regulation concerning what services you will permit to be performed on the assigned spaces and what services you will not permit to be performed?

A. I don't think that question has ever come up. I imagine that all the services that are performed there are necessary to be performed there. In other words, I will put it this way: Any necessary services—any services necessary to be performed on the pier.

Q. Would that permit the packing or re-packing of cargo?

A. For damaged cargo?

Q. For other than damaged cargo?

A. Well, I don't think there is any of it being done on the water front except for damaged cargo.

Q. Do you supervise the performing of such services?

A. Oh, no, no.

Q. So that, so far as you know, the various assignees might do canning operations on those?

A. Oh, we would know about that.

Q. Would you permit it?

[fol. 1148] A. No, no; we would not.

Q. Where would you draw the line?

A. We would draw the line, I think, as between cargo damaged cargo that might be necessary to repair before it could be shipped or taken away from the pier. We wouldn't allow canning operations, or operations of that kind on the pier.

Mr. Scoll: That is all, thank you.

Mr. Differding: I suggest a five-minute recess, Mr. Examiner.

Examiner Basham: Did you have any further questions of this witness?

Mr. Scoll: No.

Examiner Basham: You are excused, Mr. Gates.

(Witness excused.)

Examiner Basham: A five-minute recess.

(At this point a short recess was taken, after which proceedings were resumed as follows:

Mr. Differding: Mr. Geary, please.

WILLIAM A. GEARY was thereupon called as a witness for the Commission and, having been first duly sworn, testified as follows:

Direct examination.

By Mr. Differding:

Q. Will you please give the reporter your full name and [fol. 1149] business address?

A. William A. Geary, Chief Wharfinger, Board of State Harbor Commissioners, 1730 Cornell Drive, Alameda.

Q. Mr. Geary, your are Chief Wharfinger for the Board of State Harbor Commissioners of San Francisco?

A. Yes, sir.

Q. And how long have you held that position?

A. About two and a half years, sir.

Q. Prior to that time what were your duties with the Board of State Harbor Commissioners?

A. I was Wharfinger and Revenue Auditor.

Q. And would you briefly describe the duties of the Chief Wharfinger particularly as they relate to wharf demurrage and free time.

A. Well, my department has charge of all the wharf demurrage and also all of the free time. In other words, I have 21 wharfingers under my jurisdiction, and as soon as the cargo is planted on the dock they report at my office.

Q. Do you have a copy of exhibit 64 in front of you?

A. Yes, sir.

Q. Do you mind turning to page 18?

A. Yes, sir.

Q. Paragraph (b) where appear the words in parenthesis "Five days after assignment of space," what does that mean, Mr. Geary?

[fol. 1150] A. Well, Coastwise and inland waterways cargo is entitled to five days free time. That starts at the time the first cargo arrives at the dock until five days thereafter.

Q. By that do you mean, for example, if the first carload of freight for the particular ship for which the space has been assigned arrives at one o'clock in the afternoon, five days later at one o'clock in the p. m. the free time is up?

A. Yes, and the ship must be moving by that time. Otherwise, it has exceeded the free time.

Q. That is my next point. Must the ship start to load the initial tons or must it have completed loading the fifth day at one P. M.?

A. No, it must have started to load.

Q. And if the amount of cargo is such or the operating conditions are such that it takes that vessel five more days to finally complete its loading, the free time would, in effect, be extended the additional five days; is that correct?

A. Well, I don't quite understand the question.

Q. I am trying to find out,—well, I will state it in a little clearer manner. Assume that the first carload of freight arrived on the dock on February 10th and the vessel first starts to load on February 15th and finally completes loading on Februafry 20th. What charges, if any, would be assessed by reason of the fact that there was a spread of ten days between the receipt of the first cargo for that vessel [fol. 1151] and the final completion of the loading of the vessel?

A. There would be no charge. We accept that as being loaded within the free time.

Q. And that would be true if the vessel was loading only one day more than the five-day period or five or six days?

A. That is correct.

Q. And that same condition would obtain in the other trades shown and indicated in paragraph (c) on page 18, is that correct?

A. Yes, sir; that is correct.

Q. And is your understanding the same as that stated by Mr. Gates that the charges shown in paragraph (c) are also on a weight or measurement basis?

A. Yes, that is the regular practice.

Q. And does that likewise hold true on the charges indicated in Condition No. 1 on page 20 applicable to the bulkhead storage?

A. Yes, sir.

Q. In exercising your discretion as chief wharfinger in granting bulkhead storage, what is the usual procedure that you follow in granting that bulkhead storage basis of charge, Mr. Geary?

A. Well, the procedure is for the steamship company to write in requesting the bulkhead storage. We check into it and see if it is in accordance with our rules and regulations. [fol. 1152] The wharfinger does that for me. And, if so, he reports back to me and I issue a letter of bulkhead storage, and when the wharfinger receives that letter, then he is authorized to make the bulkhead storage charges.

Q. You refer to rules and regulations. Are there any rules and regulations respecting the application of bulkhead storage rates not set forth in exhibit 64?

A. Yes. There is one.

Q. Would you mind stating its purport as clearly as you can?

A. This was adopted on the 25th of August, 1938 on motion of Commissioner Moore, seconded by Commissioner Sullivan. The following resolution was adopted by unanimous vote:

> "Resolved that the tariff charges of the Board of State Highway Commissioners for San Francisco Harbor No. 2, effective December 1, 1925, amended to February 1, 1938, be and hereby is amended at page 20 after paragraph 3, by adding hereto:
>
> "4. Cargo which cannot be removed due to circumstances over which the shipper has no control."

I might add that that was put in by the Board to take care of situations where there was a tie-up of cargo. As you well know, we have had a good many tie-ups, and under those circumstances we grant them bulkhead storage on the cargoes.

Q. And that is specifically for the purpose of granting [fol. 1153] bulkhead storage rates on strikebound cargo, either by the stevedores on the dock or by the personnel of the vessel; is that correct?

A. That is correct.

Q. Now, do you make the same investigation as to exercising your discretion when a request is received direct from a shipper as you do with a request from a steamship company?

A. I won't recognize a request from a shipper. I always refer to the steamship company.

Q. What happens if the steamship company says "Nothing doing! We don't want that basis granted," and the shipper puts up a very urgent plea that it should be granted?

A. Well, we investigate it. Sometimes the dock is so congested that it is impossible to leave that cargo on the dock without interfering with the operations. In that case the steamship company says they can't operate. They have this cargo on the dock and we just cannot grant a bulkhead storage.

Q. Have you ever overrode the objection of a steamship company to the granting of bulkhead storage rates at the request of a shipper?

A. No. The shipper usually requests it with the permission of the steamship company. I refer it to the steamship company, and then they write a letter requesting the bulkhead storage, and they write a letter forwarding the request [fol. 1154] of the shipper.

Q. Referring to the matter of the free time for removing discharged cargo which is set forth at page 19 of Exhibit 64, with five days allowed for coastwise, inland and intercoastal, foreign and offshore seven days, and in transit ten days, in cases where it takes the vessel five days to discharge its cargo completely does the free time run from the discharge of the final ton from the vessel or from the time that the vessel starts to unload the initial ton?

A. No, from the time the last slingload arrives on the dock.

Q. Does that apply from the hour that that last slingload is placed on the dock or at the following 12:00 midnight or 7:00 a. m. in the morning, or do you have any set hour from which those charges would henceforth apply?

A. No. The hour the last slingload was discharged on the dock.

Q. Now, I asked Mr. Gates a question which was confusing to me with respect to the two bases of charges indicated in paragraphs (B) and (C) on page 18, and the single basis indicated under Condition No. 1, page 20. How do you

apply the charges indicated in Condition No. 1 on page 20?

A. Well, as you note, this cargo is either rejected or left over or overlooked, and usually if it is on the dock for two or three days, the shipper will take advantage and pay 2½ cents a ton. But sometimes it is on the dock longer [fol. 1155] than that, and he will make application for bulkhead storage, so these rates will apply until the bulkhead storage rates are affected and applied.

Q. Do I understand correctly, when cargo is not removed from the vessel for which it is assembled and limited to rejected, left-over or over-booked cargo remaining, then the basis indicated under Condition No. 1 applies regardless of trade, is that correct?

A. That is correct.

Q. But when it is not rejected, left over or over-booked for the vessel for which it was assembled, the two bases of charges, dependent upon the trade, are applied as indicated in paragraphs (b) and (c) on page 18. Is that correct?

A. Yes, sir.

Q. Now, in exercising your discretion in the granting of bulkhead storage rates, Mr. Geary, have you ever required as a condition thereto, that the steamship company or the shipper or consignee must bear the expense of transferring cargo from one point on the dock to another or high-piling the cargo in order to conserve space and restricting your answer for the moment to the assigned piers?

A. Yes.

Q. That service, however, is never performed? That handling service is never performed by the Board?

A. No.

[fol. 1156] Q. And the Board in no way pays any part of that expense?

A. No.

Q. And is it entirely upon your determination as to whether or not that cargo should be transferred from one spot to another or high piled?

A. Well, it all depends upon the amount of space available for the cargo. When I know there is not going to be enough space available on an ordinary pier without high piling it, I so state, and then it is up to the steamship company to high pile. In other words, we have been so congested here at times that we know very well we can get the cargo on the pier if it is high piled, but if they don't high

pile it, it is impossible to get the cargo on the pier. Therefore, it has to be high piled.

Q. Do you sometimes grant bulkhead storage rates and leave the matter of requesting the shipper to assume or consignee to assume the burden of transferring or high piling to the discretion of the steamship company holding the assignment?

A. Well, I never have had that matter come up.

Q. Have the steamship companies in some instances urged that bulkhead storage rates be applied pursuant to high-piling or transferring of some of the cargo?

A. No. I have never had that matter come up either.

Q. Turning to the terminals and taking State Terminal first, is it usual or unusual practice to require high piling of cargo at that facility?

[fol. 1157] A. Well, recently we had large blocks of sugar offered and my impressions were, if they wanted to handle this sugar, it had to be high piled and it was high piled.

Q. And that was because of——

A. (Interrupting:) Lack of space.

Q. (Continuing:) —of the necessity of conserving space?

A. Yes, sir.

Q. And that is quite a problem at that facility?

A. It was at that particular time; yes, sir.

Q. Assume that a 15-ton carload of canned goods arrived on the dock, do you usually require that that be high piled?

A. No, just large blocks of cargo.

Q. Are you aware of the fact that the State Terminal has a handling charge of .50 cents per ton on all general merchandise N. O. S.

A. I am not familiar with all of the ramifications of that tariff.

Q. I see. Whether it be inbound or outbound cargo, if you consider that it is necessary to conserve space, you make it a point of the granting of the terminal basis of charges which are indicated on page 22 of exhibit 64 as to forcing the shipper or consignee to high-pile the cargo; is that correct?

A. As was stated, recently we had large blocks of sugar offered that were going out intercoastal vessels, and the understanding was—I found out from the Engineering De-
[fol. 1158] partment how high it could be piled without tak-

ing any chances of damaging the dock. The terminal operator was instructed he would have to pile it to that height, otherwise he couldn't handle the sugar. We had to conserve the space.

Q. Before the State Terminal accepts goods on the terminal basis of charges, do they have to secure your permission?

A. Well, on the inbound movements when they make their application to me they usually state that five or six hundred tons of the cargo that is going to be discharged is going into storage.

Q. On the sugar that you referred to, before the receipt of that sugar, did the State Terminal secure your permission for the acceptance of that cargo and which was followed by your requirement that it be high piled?

A. In this particular instance it was taken up by the Board first.

Q. Now, taking up the operations at the Golden Gate Terminal, that is an unusually wide structure is it not, as compared to your other facilities?

A. It is the widest structure on the water front.

Q. And do you find the same necessity for requiring transfers or high piling of cargo there that you do on your assigned piers for State Terminal?

A. The assigned piers? I will say at the State Terminal we had the same situation in regard to the sugar. We also [fol. 1159] required them to high pile it to conserve space. We needed the space.

Q. However, if you did not need the space you would not make that requirement; is that correct?

A. That is correct.

Q. Now, what happens with some of these commodities that may not be high piled because of their inherent nature? They cannot stand high piling beyond a one-tier height. Do you just proceed to let the space be utilized without any further requirement as to penalty charges, or anything of that sort?

A. That is correct. We don't assess any penalty charges on the cargo.

Mr. Differding: Thank you, Mr. Geary. That covers all the questions I had.

Cross-examination.

By Mr. Somers:

Q. Mr. Geary, can you enlighten us on some of the points at issue at the Islais Creek Grain Terminal Corporation? First, as to the movement of ships, does not the Islais Creek Grain Terminal Corporation determine when ships may come to this particular terminal for cargo?

A. They always send me a berthing application, Mr. Somers.

Q. Is it not within their power to decline to receive a ship at its terminal on any particular date?

[fol. 1160] A. I have never heard them decline any.

Q. Is it not true that the ships must go there at the convenience of the operators of the terminal?

A. Yes, that is correct.

Q. As to the movement of grain in and out which is kept there on wharf demurrage, is it not a fact that very material quantities of grain are received at the terminal and are kept there for material periods and then move out without, well, we will say figuratively speaking, never seeing salt water.

A. Well, I couldn't answer that question.

Q. Don't you make periodic trips up through the terminals to observe operations down there?

A. I do. There might be. I have never seen any large lots of cargo removed.

Q. You have never seen any large lots of car loading down there to a material degree?

A. No, sir; I have not.

Q. Do you know whether or not any grain arrives there by rail for local consumption and moves off either by truck or rail to local mills, San Francisco mills and other users of grain and feed?

A. No, sir; I have never heard of that practice.

Q. Are you familiar with the personnel of the operators of the terminal?

A. Well, I see Mr. Coleman occasionally. What I mean [fol. 1161] by that is once every week.

Q. How about the stockholders, the President? Did you ever meet Mr. Bell?

A. I have met Mr. Bell; yes, sir.

Q. You recognize him as President of that Terminal?

A. No, I do not.

Q. He never talks to you in any official capacity so far as you know?

A. No, sir; he does not.

Q. Do you know whether Mr. Bell is in the grain business or not?

A. I couldn't tell you, sir.

Q. Are you familiar with the arrangement under which the Corporation operates at the terminal?

A. No, sir; I am not.

Q. Do you know whether they pay for any repairs to the structure?

A. I can't answer that question.

Q. Nor taxes, or insurance? You know nothing about that?

A. I know nothing about it.

Q. Well, is it not a fact that the Grain Terminal Corporation operates at this terminal as if it were the private owner of the terminal?

A. Well,——

Mr. Kilkenny: Now, Mr. Examiner, I think that is asking [fol. 1162] distinctly for a conclusion of law. It is not a fact.

Examiner Basham: What is your title?

The Witness: Chief Wharfinger.

Examiner Basham: As Chief Wharfinger would that come within your knowledge, anyway?

The Witness: Well, only that the Harbor Board does out there. We assess the demurrage charges against the grain in storage.

By Mr. Somers:

Q. Who furnishes you with a list of the grain?

A. Mr. Duncan. He is the clerk out there at the Islais Creek Grain Terminal Corporation. He furnishes us that from his records. The Wharfinger has access to his records at all times.

Q. You receive indirectly but from the Islais Creek Grain Terminal Corporation information of the movements of grain in and out so that you can properly assess your wharf demurrage charges?

A. Yes, sir; we do.

Mr. Somers: I think that is all.

Redirect examination.

By Mr. Scoll:

Q. Mr. Geary, paragraph 4 which you read into the record as being added to conditions on page 20 of exhibit 64, [fol. 1163] does that paragraph 4 which you stated was adopted by the Board of Port Commissioners appear in published form?

A. It is in the minutes of the Board; yes, sir.

Q. No. Was it published?

A. I don't think it was.

Examiner Basham: And it was not posted?

The Witness: Pardon me?

Examiner Basham: And it was not posted at your terminal?

The Witness: Of course, the minutes of the Board are available to anybody. The minutes are open at all times.

Examiner Basham: But they were not posted at the wharf?

The Witness: No, sir. They were not posted at the wharf.

By Mr. Scoll:

Q. How were the interested parties—vessels, operators, shippers and consignees—advised of that minute of the Board?

A. Well, they weren't advised of it.

Q. You testified that the free time is computed from the hour when the last slingload of cargo reaches the dock. By that do you mean that the free time would be in at the hour when the last slingload is landed and continues for twenty-four hours, so that if the last slingload reached the dock at 5:00 P. M. today, the first day of free time would end at [fol. 1164] 5:00 P. M. tomorrow?

A. Yes. The first day of free time would end at 5:00 P. M. tomorrow.

Q. Similarly, at any hour of the day the free time would run 24 hours from that hour?

A. Yes.

Mr. Scoll: That is all, thank you.

Recross-examination.

By Mr. Graham:

Q. Just one question. In connection with this checking of cargo to determine whether it is on demurrage or free

time do you take the records of the steamship company or does your company take the records of the steamship company or do your assistants themselves actually check cargo that is on the respective docks?

A. No. We check the delivery records of the steamship companies. As soon as the free time is up—Suppose the free time is up tomorrow morning at 8:00 o'clock, the wharfinger goes in there at 8:00 o'clock tomorrow morning. Suppose the ship is the San Bernadino. He checks the delivery record to see what it is.

Q. That is, he checks the delivery record against the manifest?

A. Yes, sir. He knows what is on the dock anyway the night before the cargo goes on demurrage. Most of these lots are very conspicuous.

[fol. 1165] Q. Take the case you have given. The Wharfinger checks the delivery tags against the manifest and he finds that there is certain cargo left. Then is that cargo automatically from there on assessed demurrage?

A. It is automatically assessed from then on wharf demurrage on the basis of 25 cents a ton for the first five days after the expiration of the free time and 50 cents a ton per each succeeding five-day period or part thereof.

Q. In other words, there isn't any such thing as cargo being on the dock which is not assessed demurrage?

A. All cargo is assessed demurrage after the expiration of the free time.

Q. And once assessed the demurrage is collected?

A. Yes, it is.

Q. That is both eastbound and westbound? Of course, you don't check delivery tags against the manifest on inbound cargo?

A. Well, inbound cargo, the "Guide" publishes the receiving date of the vessel and the wharfinger checks to see that cargo isn't received prior to the receipt of the vessel as listed in the "Guide."

Q. You use the "Guide" as the basis of your information?

A. We do, sir.

Q. If your vessel is late, then——

A. (Interrupting) As soon as the first cargo lands on [fol. 1166] the dock he notifies my office. We have a record of it. If the ship is late the procedure is for the steamship company to request bulkhead storage on the cargo that is

accepted, say, prior to receiving time of the vessel, and that is assessed against the steamship company. They are penalized for the fact that the vessel is late.

Q. Collected from them and paid by them?

A. Collected from them and paid by them.

Mr. Graham: I think that is all.

Redirect examination.

By Mr. Differding:

Q. Before I overlook it, Mr. Geary, what is the unit of weight and what is the unit of measurement that you use in determining these wharf demurrage charges, either on a penalty basis or a bulkhead storage basis? In other words, is it forty cubic feet for 2000 pounds that you use? Is that measurement and weight?

A. Well, we use weight or measurement, whichever yields a greater revenue. If it measures up more than it weighs, we assess it on a measurement basis.

Q. But am I correct that 40 cubic feet for 2000 pounds is your unit?

A. Yes, sir; that is correct.

Q. Just one point more that I am not clear on. You mentioned San Bernadino. That is an intercoastal vessel, is it [fol. 1167] not?

A. Yes. That is one of the Williams Dimond vessels.

Q. And the rates in that trade are based on a hundred pounds?

A. Yes.

Q. And does the ship's manifest or the delivery documents that are available to you show the measurements of this cargo?

A. No. In cases of that kind where we have lots of cargo on the dock, I might say that we have very little cargo on the dock after the expiration of the free time, and when we have cargo that measures more than it weighs, we put the stick on it.

Q. You actually do stick it?

A. We put the stick on it, yes.

Q. And I suppose that a number of these commodities that you handle frequently, why, you have got those ratios worked out as between the different types of practices used between the different commodities?

A. I have those figures in my office when we need them.

Q. But when you get a commodity that you don't have any measurement on you go out and measure it?

A. The steamship company usually does that for you.

Q. The steamship company usually does that for you?

A. Yes, in most cases, I understand. If not, we can have the wharfinger do it. Most of our wharfingers are old-time ship clerks.

[fol. 1168] Q. And, so far as you know, that has been regularly and consistently done during the time you have been in charge of handling wharf demurrage accounts?

A. The only time it wasn't done was during a strike, during a tie-up when we assessed everything on a weight basis. We have such a tremendous amount of it it would be impossible to put the stick on it.

Q. And we are to understand that the only exception to that failure of measuring cargo to determine its cubic feet in relation to weight was during strike conditions when you applied uniformly to all strike-bound cargo the bulkhead storage rate of 12½ cents per ton for seven days or fraction thereof upon a weight basis only?

A. I believe that is correct.

Mr. Differding: Thank you.

Recross-examination.

By Mr. Graham:

Q. You said that you checked delivery tags against manifests on inbound cargo. Now, do you check dock receipts on cargo that is outbound, on cargo that is received on the dock for water transport out, to determine how long it has been on the docks.

A. Well, we check with the receiving clerks. They give us that information. The Wharfinger checks it with the Receiving Clerks. He checks the receiving clerks' records.

[fol. 1169] Q. Which would mean a check of dock receipts or their——

A. (Interrupting:). Yes, sir.

Q. (Continuing:) Or their compilation?

A. Hand tags, whatever they might have.

Q. So that the same system is used both as to ingoing and outgoing cargo?

A. Yes sir; that is correct.

Redirect examination.

By Mr. Scoll:

Q. You stated that the shipping companies usually put a stick against the cargo if that is necessary, rather than having the wharfinger do it himself. Do you accept the steamship company's figures for the correct measurement in those cases?

A. We do; yes, sir.

Q. Is that the practice?

A. Yes, sir.

Recross-examination.

By Mr. Townsend:

Q. Mr. Geary, would you please take the case of an outbound shipment and explain exactly what the employees of the State Board do with respect to that shipment and what records you obtain and use in connection with the computation of free time and wharf demurrage? I don't think it is clear in the record just exactly what you do.

A. Well, as I stated before, as soon as the first cargo ar- [fol. 1170] rives on the dock; for instance, if it is coastwise, it gets five days free time from that hour. In other words, suppose the cargo came in on the dock, say, eight o'clock Monday morning. Well, Tuesday morning——

Q. (Interrupting:) Just a minute. I don't mean to interrupt you. This is outbound cargo. Let us take it first when it arrives by rail and, secondly, when it arrives by motor truck.

A. Well, the wharfinger checks with the receiving clerk.

Q. Who is the Receiving Clerk?

A. Well, whoever is on there for the steamship company, like the American-Hawaiian have a receiving clerk on each one of their receiving piers.

Q. The receiving clerk is an employee of the steamship company?

A. He is an employee of the steamship company and we have access to his records at all times.

Q. So, then, the first thing that you do when cargo arrives on the dock from a truck or a rail car is to look at the receiving clerk, who is an employee of the steamship company?

A. Sometimes it is not necessary to do that because, if the dock is clear, as soon as the first lot comes in on the dock we have a record of it.

Q. How do you have a record of it?

A. The wharfinger checks it, naturally.

Q. If he happens to be there?

[fol. 1171] A. Well, he makes his rounds three or four times a day.

Q. And can he follow all of the trucks as they are unloading?

A. So long as he gets the first one, that is all that is necessary on the receiving.

Q. Well, one wharfinger can't be covering several docks at one time, can he, and checking all of the first unloads of a truck for a particular vessel?

A. He can cover three or four docks three or four times a day.

Q. Which does he use? His own check or the receiving clerk's records?

A. He uses both.

Q. In other words, he examines the Receiving Clerk's records and he goes around and every few times a day he counts everything that is on the dock?

A. No. I am talking about the first receiving. The first receiving, naturally, that's the start of the receiving time of that vessel. We are not particularly interested—suppose the cargo comes on the dock on the first day of February and the vessel is loading on the 5th day of February, we are not particularly interested because we know very well that the cargo has been loaded within the free time because as soon as the first slingload of cargo is loaded the vessel is loaded within the free time.

Q. How do you know that the vessel is going to arrive [fol. 1172] there when you think it is going to arrive?

A. Well, we know when the first lot of cargo arrives on the dock—we know when the first slingload goes into the ship.

Q. How do you know when the first lot of cargo arrives on the dock? Because, as I understand that you do that by looking at the receiving clerk's record, plus any additional check that your own wharfinger can make; is that correct?

A. I will tell you something else. We have various other means. We check with watchmen, we check with anybody

who might be on the dock at the time. We have four or five ways of checking.

Q. You must have some system?

A. Well, we do. Take the receiving clerk: Every once in a while we check up with other people just to make sure there is no slip on it.

Q. Do you ever find the receiving clerk's records wrong?

A. Occasionally, yes.

Q. And that is found by this other check that you make once in a while, is that correct?

A. Yes, that's correct.

Q. All right. Now, then, we have the first load of cargo on the dock for this particular vessel, and you have checked these various means and have found out when that arrives. Now, you are not interested, then, in when any more cargo arrives for that vessel?

[fol. 1173] A. Unless it is late to load and then we check back and find out how much cargo came in the first day, how much came in the second day, how much came in the third day and how much came in the fourth day, depending on how many days late the vessel is to load.

Q. How do you check back to find that out?

A. From the records of the steamship company and the Receiving Clerk.

Q. And you make no corroborating check by your own employees?

A. No, we do not. The wharfinger gets those records from the receiving clerk.

Q. Does the receiving clerk make an actual count of all the cargo that is deposited by a motor truck, we will say, on the dock?

A. You mean, by day?

Q. As it comes off the truck. Is he a check clerk?

A. The receiving clerk?

Q. Yes.

A. No. He gets his records from the other clerks in the dock. He gets the total number of receipts from the different clerks on the dock; maybe 10 or 15 clerks on the dock. At the end of the day he gets all the receipts from these clerks.

Q. And the check clerks are employed by the steamship company?

[fol. 1174] A. They are, yes.

Q. Now, then, what information do you use to determine when the cargo is—strike that.

What is the important thing to determine when the wharf demurrage period ends or the free time period ends? Is it the time when the first cargo is put aboard the vessel or when the vessel sails?

A. When the first cargo is put aboard the vessel.

Q. How do you ascertain that fact?

A. Well, we can get it from the dock log, or we can go aboard the ship and find out when she commenced loading. Usually the steamship companies have a rough log and we can check it from them.

Q. Does your wharfinger run around and see what time every boat started loading?

A. No, we usually know when the boat started loading. We ask the stevedores boss if we want to. But in most cases we get from the ship's rough log on the dock.

Q. In other words, generally speaking, you rely on the information furnished by the Steamship company employees?

A. Well, it is easy enough to know when a ship comes in at five o'clock at night and tells me that they are not going to work until eight o'clock in the morning, and you know when they start to work it is eight o'clock in the morning. The wharfinger can see the ship loading all right. There [fol. 1175] is no secret about that.

Q. What do you do in case of cargo that is transshipped from one vessel to another on two different docks in the Port of San Francisco? How do you compute your wharf demurrage and free time and how do you obtain the information necessary to make the computation?

A. Do you mean the cargo on the first dock beyond the free time?

Q. Any way. I want to know how you determine whether it is or whether it isn't.

A. In transit cargo is entitled to ten days free time. At the end of the seven-day period, suppose that it is foreign cargo in transit. At the end of the seven-day period we know which cargo is on the dock.

Q. Let us start at the beginning, may we?

A. Surely.

Q. Let us take some cargo. We will say that it is coming into San Francisco via an ocean going vessel from the Orient, and it is to be transshipped to an intercoastal vessel,

as an illustration, and we will assume that the two vessels dock at different piers so there must be a transfer. Will you please start at the beginning and trace your operations all the way through so we can find out how you learn how much wharf demurrage, if any, should be assessed?

A. Well, as I was saying, if it is a foreign vessel they are [fol. 1176] entitled to seven days free time.

Q. That is on the first?

A. Yes. We know that. We know how much cargo is on the dock. At the end of the seven days, if a certain amount of that cargo is in transit, you get ten days.

Q. Wait a minute.

A. I have to show you what happened. At the end of the ten days, if that cargo is on the dock and it is in transit, it is subject to demurrage and it is subject to demurrage until such time as it is removed to the second dock. However, if that cargo were removed within the ten days it would not be subject to the demurrage because it would be subject to the free time.

Q. How do you know when it is moved from the dock?

A. We can get that from the delivery clerk at the dock at which the cargo arrived.

Q. Does your wharfinger go around at the end of the day or several times during the day and ascertain from these records of the delivery clerk on the dock what cargo has been moved?

A. That is his duty; yes, sir. That is what he does.

Q. And he does that at least once a day?

A. More than once a day.

Q. All right. Let us go over to the second dock. Let us assume it is on the second dock. Is there some additional free time there if it is going on an intercoastal vessel?

[fol. 1177] A. Yes, sir. There is an additional toll.

Q. There is an additional toll and additional free time?

A. Yes; additional ten days free time.

Q. Just the same as if it were a new movement?

A. Just the same as if it were a new movement.

Q. Do you ever have a situation where cargo comes in to the dock for one vessel and is not loaded on to that vessel because the vessel is full, and is shifted to another vessel at another dock; or, first, let us take it at the same dock.

A. Well, yes. If you have cargo coming in like, we will say the American President Lines, they may have cargo coming in going intercoastal, Luckenbach or American-

Hawaiian's ship may pick it up. So long as they pick it up within the ten-day period it is in-transit cargo and there is no further toll on it. There is only one facility used, so there is only one toll assessed.

Q. The State Board assesses no service charge or receiving and delivering charge, does it?

A. No, sir.

Q. And neither does the steamship company, does it? That is normally a charge against the ship?

A. On the unassigned piers, no.

Q. What are the sources of revenue from the terminal operations of the State Board? And by that I mean, you receive tolls and wharf demurrage, and what else?

A. Dockage.

[fol. 1178] Q. Just those three? Tolls, wharf demurrage and dockage? Your space rentals or assignments——

A. (Interrupting:) Pardon me?

Q. You receive also space rentals of piers, do you not?

A. Yes, sir; we do.

Q. Is there anything else that is received by way of revenue by the State Board?

Examiner Basham: Hasn't that been developed about three times in this record?

Mr. Townsend: I did not think it was clear, but I will submit it.

By Mr. Townsend:

Q. There was one additional point that I do not think was clear with respect to this wharf demurrage, and that is how you determine whether to apply the wharf demurrage charges against the shipper or against the vessel? As I understand it, that depends upon some supposedly sailing day of the vessel. What sailing date do you use to determine whether the vessel is late or not?

A. What are you referring to? Cargoes in storage going on the vessel?

Q. Cargo that is on the dock going, let us say, in an outbound vessel.

A. In storage or in transit cargo.

Q. Let us take in-transit, first, and then in storage next.

[fol. 1179] A. If the vessel is two days late to load and, say, we had 200 tons of cargo prior to receiving time of the

vessel, well, that charge would be assessed against the ship and paid by the steamship company.

Q. How do you determine whether the ship is late to load? That is the point that is not clear to me.

A. Because she didn't load the cargo within the free time.

Q. How do you determine whether the vessel was supposed to have sailed? You don't publish a sailing schedule, as I understand it.

A. No, we don't publish a sailing schedule. We determine the free time as I told you. On coastwise cargo we give them five days free time. If they don't load that cargo within the five days, it is subject to demurrage, and that demurrage charge is against the steamship company. If the ship is late to load it is not the fault of the shipper. It is the fault of the steamship company. And that charge is assessed against the steamship company.

Q. Do you ever have any instance where wharf demurrage is assessed against the shipper?

A. No.

Q. Let us take the case of storage charges. Do you ever have any storage charges that are, you might say, waived or where the free time period is extended because of a delay of the vessel?

A. No, sir.

[fol. 1180] Mr. Townsend: That is all.

Examiner Basham: You are excused.

Mr. Kilkenny: Mr. Geary, I have one question.

By Mr. Kilkenny:

Q. I believe you testified in regard to a minute order that was made regarding the granting of bulkhead storage rates. Is that correct?

A. Yes, sir; I did.

Q. And I think you stated that that was not published, is that right?

A. That is what I said. I believe it was not published.

Q. It is a fact, is it not, that this operates also as a reduction in charges for the shippers who find themselves in that situation?

A. As I mentioned, this was adopted by the Board on account of these frequent tie-ups. You might have a steamship company tied up for seven or eight or ten days and the

Board didn't want to assess a penalty demurrage on those particular operations. So we assessed bulkhead storage.

Q. They would have no object in knowing in advance about that? They couldn't know when there was going to be a tie-up?

A. We never know.

Q. No one would know about that until the contingency actually occurred?

A. Yes, sir; that is correct. I think the reason—if I [fol. 1181] might state it rather bluntly, the reason it wasn't give too much publicity was that we didn't want too much chiseling.

Q. Do you always advise the shipper of a change in that rate? Do you always advise the shipper?

A. Yes, we advise him.

Q. And there is no way of knowing ahead of time?

A. That was put in on account of these frequent tie-ups.

Mr. Kilkenny: That is all.

Examiner Basham: You are excused.

(Witness excused.)

Mr. Scoll: Mr. Parr.

Fred D. Parr was thereupon called as a witness for the Commission and, having been first duly sworn, testified as follows:

Direct examination.

By Mr. Scoll:

Q. Please tell the Reporter your name, Mr. Parr?

A. Fred D. Parr; P-a-r-r.

Q. And your occupation, Mr. Parr?

A. I am President of the Parr-Richmond Terminal Corporation.

Q. The Parr-Richmond Terminal Corporation operates a marine terminal at the Port of Richmond?

A. That's right.

Q. What physical facilities do you have there?

[fol. 1182] A. We have four terminal facilities: Two at the Inner Harbor of Richmond; one at the Outer Harbor; and one at the Western Harbor.

Q. And those consist of the usual aprons, transit sheds?

A. Three of them are the generally recognized terminal facilities of transit sheds, and one of them is merely a transfer facility for handling sugar between barges and railroad cars.

Q. Do you also have any warehouse space there?

A. No.

Q. Are your rates and regulations and rules regulated by the California Railroad Commission?

A. Yes.

Q. Is that pursuant to the statute?

A. Yes.

Q. Are you familiar with the final report of the California Railroad Commission in case 4090?

A. In a general way, yes.

Q. I would like to read to you a statement from that report which occurs on page 96 of Exhibit 61, and I shall ask you a question about it.

> "Thus out of every 100 square feet chargeable to demurrage 30 square feet of aisles and 10.5 square feet of waste areas are non-revenue producing leaving 59.5 square feet as revenue producing."

[fol. 1183] Do you agree with the author's conclusion that approximately 59.5 square feet of area chargeable to demurrage is revenue producing?

A. Well, I would think that that would be correct in certain cargoes. I am not as familiar with it, however, as our Mr. Engel, who is here, and could give you better answer to that question, probably, Mr. Scoll. Of course, when you handle straight lots of sugar or petroleum products, or commodities of that character to lose less aisle space than you do where you have commodities that have different marks and have to be segregated.

Q. Would you say from your experience it was more or less than 60 per cent?

A. I think in our experience in Richmond the lost space would be a little less than that. I think we would occupy around 75 to 80 per cent of the space.

Q. The final report in this case—that is, exhibit 61, was issued May 16, 1936. Is it a fact that the direct labor costs incidental to the operation of the Parr-Richmond Terminals have increased since that date?

A. Yes.

Q. Similarly, the general office and administrative expenses have increased?

A. Yes.

Q. Has the direct labor that is used in terminal operations increased or decreased in efficiency since then?

[fol. 1184] A. It has decreased.

Q. Have your taxes increased?

A. Yes.

Q. What taxes are you referring to?

A. Both the city and county taxes.

Q. That is, taxes on your facility?

A. Yes.

Q. Are they real estate taxes?

A. Real estate taxes.

Q. You pay a franchise tax?

A. We pay a corporation franchise tax.

Q. Is that a state or municipal tax?

A. That is state. As far as our city and county taxes are concerned, I want to explain that a very small proportion of our facilities are owned by our own corporation. They are practically all owned by the city, so that the amount of increase in taxes is very small in view of the fact that there are no taxes, either city or county, on the municipally owned facilities, and on the portion of the facility which we have constructed, whereas we pay the tax to the city, but the city in turn refunds it to us to aid in defraying the original cost of the facilities.

Q. So that, in effect you actually do not pay any taxes on the facility?

A. Well we pay a county tax on the portion that we constructed.

[fol. 1185] Q. But you pay no municipal tax on that? That is refunded to you?

A. That is refunded.

Q. And on the terminals which you hold under a lease, is that correct?

A. Yes, two different leases.

Q. To leases from the City of Richmond, there are no city taxes on that?

A. No city or county taxes.

Q. Can you just tell us which terminals you hold under lease from the city of Richmond and which you constructed yourself?

A. Terminal No. 1 is held under lease from the city. Terminal No. 2 is held under lease from the city of Richmond. Terminal No. 3, the northerly half was constructed by the City of Richmond and the southerly half was constructed by the Parr-Richmond Terminal Corporation, each unit costing about $275,000 of that joint facility. Terminal No. 4 is held under lease from the city.

I might explain that Terminal No. 1 is located out at the Outer Harbor on what is known as Ferry Point. Terminal No. 2 is located at the inner portion of the inner harbor. Terminal No. 3 is out at the inner Harbor just opposite the Ford Plant, and Terminal No. 4 is out at Point San Pablo at the point where San Francisco Bay adjoins San Pablo Bay.

Q. You state that you operate no warehouse facilities?

[fol. 1186] A. That's right.

Q. Is general merchandise inbound ever stored on your terminals beyond the free time?

A. I think we have some steel that is stored beyond the free time occasionally.

Q. And what rate do you charge for such storage?

A. I am not just certain what our tariff calls for, but whatever the tariff is for wharf demurrage rates, would be our applicable charge.

Q. Do you have another storage rate besides the wharf demurrage rate?

A. No.

Q. You have only the one rate?

A. That's right.

Q. And that would apply after the free time has expired on inbound cargo for so long as the cargo might be left on the transit space?

A. That is right.

Q. And such storage would be in the transit space?

A. That is right.

Q. As a matter of fact, do the revenues which you collect in a year from wharf demurrage amount to a great deal?

A. They amount to about 1½ per cent of our gross revenue. That's the wharf demurrage inbound and outbound combined.

Q. Is it correct, then, to state that any storage, whether [fol. 1187] under wharf demurrage or any other storage, would be in the transit spaces of the pier sheds?

A. That is right. At our,—I might explain that out at Terminal No. 1 we have two transit sheds divided by a railroad track, all within the radius of ship's tackle. That is, stevedores handle the cargo direct to or from any point in any of these buildings.

Q. From your experience as a terminal operator, is it your opinion that the wharf demurrage rate should be a penalty rate?

A. Well, I think wharf demurrage should be a penalty rate, but I think our basis of rates is wrong. I think there ought to be a wharf demurrage rate which would be a penalty to have cargo moved off the dock when it stays beyond the free time and interferes with the normal flow of transit cargo. And then I think there should be a wharf storage rate where you will encourage the storing of freight at ship's tackle or in the transit cargoes, and that there should be warehousing which would be in spaces wholly removed from the wharf structures. In other words, I think there are the two distinct classes of storage.

Q. You, on the other hand, do not perform any warehouse services on any of your pier sheds, do you?

A. When we gave up our Oakland water front facilities, we surrendered our warehouse franchise, which was in the name of the Parr Terminal Company, and in Richmond we [fols. 1188-1193] have never had any warehousing facilities nor franchise.

Q. Does the Parr-Richmond Company perform any storage services that are not in connection with transportation?

A. No.

Q. By water?

A. That's right.

Q. You have only the one rate; that is, the wharf demurmurrage rate?

A. That's right.

Q. Wharf storage?

A. That's right.

* * * * * * * *

[fol. 1194] JOHN P. VENTRE resumed the stand and further testified as follows:

Direct examination.

By Mr. Scoll:

Q. What are the physical facilities of the Howard Terminal?

A. Well, Howard Terminal consists of about 15 acres of land owned by private ownership on the Oakland Waterfront, on the Oakland Inner Harbor. They operate the private land facility as well as properties which they lease from the Port of Oakland, part of those being submerged lands off shore, which it is necessary for us to use for ingress and egress from our properties.

Q. Your terminal properties consist of how many pier sheds?

A. They consist of what we designate as six units, and those are subdivided by partitions and walls into a total, I believe, of 15 or 16 units. I would have to look up the records to make sure.

Q. And your facilities are deep water terminal facilities?

A. We operate deep water wharfinger facilities and also a public warehouse facility under the laws of the State of California.

Q. Your rates, rules, regulations and practices are regulated by the California Railroad Commission?

A. They are.

[fol. 1195] Q. Are you familiar with the final report of the California Railroad Commission in case No. 4090?

A. I am.

Q. Introduced in this record as exhibit No. 61, I should add. I would like to read to you a sentence on page 96 of exhibit 61, which reads as follows:

"Thus, out of every 100 square feet chargeable to demurrage, 30 square feet of aisles and 10.5 square feet of waste areas are non-revenue producing, leaving 59.5 square feet as revenue producing."

Do you agree with that statement?

A. We do.

Q. The report of the California Commission referred to was made or issued on May 16, 1936. Have the direct labor costs of operation of your terminal increased since that time?

A. They have.

Q. Similarly, has your general office and administrative expense increased?

A. They have.

Q. Can you state whether the direct labor involved in the operation of the terminal has been more or less efficient since 1936?

A. It is less efficient.

Q. What is the situation with respect to taxes since that time?

[fol. 1196] A. Well, I believe the property taxes are about the same; very little difference, if any. The payroll taxes, such as social security and unemployment taxes, have been increased considerably.

Q. And, similarly, supplies used in the operation of the terminal; has the expense for supplies increased?

A. Some of them have, yes.

Q. From your experience as traffic manager of the Howard Terminal can you state whether competition among the terminals in the San Francisco Bay region has affected the level of the wharf demurrage rates?

A. I would say that it has kept them depressed.

Q. Similarly, can you state whether such competition has affected the application of the rates published in the respective tariffs? By that I mean, do you have any knowledge whether there is any leniency in the application of rates among the various operators?

A. I know of no waiver of actual tariff charges that are filed with the Commission.

Q. You stated that you operate both a warehouse and a terminal. Goods that are on the terminal beyond the free time that have moved in inbound transit, where are they stored while they are under wharf demurrage?

A. Well, they are stored in the various units; that is, both transit and what may be termed "semi-transit" units. [fol. 1197] That is, our buildings are probably built a little different than some of the other terminals. We have two piers which extend into what we call the estuary or the water front, and then we have built our storage facilities and part of our transit facilities inland rather than going up in the air.

Q. The goods that remain in the transit sheds under wharf demurrage, are they ever high-piled?

A. They are.

Q. At your convenience?

A. Yes, entirely at our convenience.

Q. When they are so high-piled is a charge assessed to the consignee?

A. There is no charge assessed by us for high-piling.

Q. When these goods move back to the other storage places to which you have referred, a transfer cost is entailed; is that not correct?

A. Well, there is no transfer, as you might call it. There is a handling cost that is entailed and that is charged with a handling in and out charge assessed on all our warehouse storage. That is, all our warehouse storage has a handling in and out charge attached to it.

Q. And that is a charge which is billed to the consignee or owner of the cargo?

A. It is.

Q. Do you permit parcel deliveries from cargo which is stored in the transit sheds under wharf demurrage?

[fol. 1198] A. Yes, we do.

Q. Do you make a charge for that?

A. No, we don't. That is really part of a steamship agent's function during the free time period.

Q. After the free time period has expired and such goods are under a wharf demurrage charge, so long as they are in that status do you make any charge if there are parcel deliveries?

A. If they are in the wharf demurrage status there is no charge whatever for handling, other details or reports of any kind.

Q. Do you perform any services in connection with parcel deliveries while the cargo is in wharf demurrage on the transit sheds?

A. We check them out for deliveries. It is necessary to assemble them in order to conserve space; that is, when there are several varieties in the ship and one or two of the varieties are completely delivered and the other two might be piled 10, 15 feet apart. Naturally, to conserve space we draw them together for our own operating convenience.

Q. But no charge is made for that?

A. No charge is made for that.

Q. Do you allow any storage on your transit spaces other than storage under wharf demurrage rates?

A. We do, at times, have warehouse storage there, yes. That is, we sort of interchange the facilities at times to suit [fol. 1199] our convenience rather than move the cargo.

Q. And while such goods are under warehouse storage you assess the warehouse rate?

A. The warehouse rate and the warehouse handling in and out charge.

Q. That handling in and out charge would cover the movement of the goods on to the shed or on to the transit space and later off, is that correct?

A. Well, it would move it from the transit space which we more or less consider is the warehouse platform, being the warehouse is adjacent to the transit shed, or in some sections where it might be a section of an otherwise transit shed, it is deposited on that transit shed, and we, in theory, move it from that platform, which would otherwise be the warehouse platform.

Q. You say you move it "in theory." Do you actually move it?

A. At times we do, yes, according to the particular position of it that it is laying in.

Q. Do you make that in and out charge on the basis that this is warehouse storage and the in and out charge applies to all warehouse storage?

A. Yes. And I would say that practically all the warehouse storage is actually moved.

Q. You do publish a warehouse tariff?

A. We are members of the California Warehouse Asso- [fol. 1200] ciation. The tariff is published by the Association.

Q. That is the tariff which is in the record?

A. No, that is not. That is the terminal tariff you have there.

Q. The warehouse tariff is in the record as exhibit 85?

A. That's right.

Q. Do you occasionally place cargo that is in the wharf demurrage status in your warehouse facilities?

A. We sometimes use one of the two sheds that has been designated as a warehouse for the handling of wharf demurrage facilities—wharf demurrage cargo, rather.

Q. And accordingly, wharf demurrage cargo is stored in such places?

A. Yes.

Q. And so that would be correct to say that you use your warehouse and your transit spaces interchangeably into wharf demurrage and public warehouses?

A. To a limited extent. I think that would require a little broader explanation.

Q. Go ahead and explain it, if you can.

A. Well, at certain times when the facilities are not very well pressed or filled with transit cargo, if there is cargo coming off a steamer, and we know that it is going to be placed in storage stock, or if it is declared for storage after it has been laid on the warehouse,—rather, on the transit facility,—we may use that particular unit as a warehouse. [fol. 1201] On the other hand, when we are busy, and we find that the transit cargo is filling up the so-called transit space, as a matter of convenience we may shove part of that into our unused portion of our warehouses. That is, we designate such building more or less as warehouses and others as units for the purpose of accounting for the purpose of the Railroad Commission's records.

Q. Do you store goods under some other rate than the published warehouse rate or the wharf demurrage rate at any time?

A. No. We have no other storage other than that published in the warehouse tariffs, and that is published in our terminal tariff.

Q. So that there are only the two storage rates that might apply on your terminals?

A. On any one commodity, yes.

Q. On cargo that is in a wharf demurrage status inbound, do you issue any sort of receipt that is negotiable?

A. On any cargo which we handle on a wharf demurrage basis we issue what we call a possession receipt. If it is handled on a warehouse basis we issue a warehouse receipt.

Q. The warehouse receipt, of course, would be the warehouse receipt that is customarily used by warehousemen in California, is that correct?

A. By the Warehouse Association; the standard form. [fol. 1202] Q. The possession receipt, is that a negotiable receipt?

A. Either negotiable or non-negotiable. We issue both.

Q. Depending on whichever is requested?

A. Yes, sir.

Q. Does Howard Terminal lease space to industrial concerns?

A. Not on the wharfinger facilities. We do have a lease on the adjacent property.

Q. How is that property referred to?

A. Well, included in this 15 odd acres that I spoke of there are about 8½ acres which are devoted or declared as wharfinger property for the purpose of cost accounting and

for our usual run of business. Part of it is declared as warehouse units, and part of it is non-public utility operations; industrial sites.

Q. And it is the non-public utility operations, as you classify it in your accounts, that you lease out?

A. That is; Yes, sir.

Q. Are any of these spaces that you lease out located adjacent to the transit sheds?

A. They are. That is, I might shorten that to say that we only have one lease of shippers' cargo, as you might say it, which is the Kieckhefer Container Company. It is a fiber board manufacturer, and a building was built according to their specifications and for their actual use aside and apart from the wharfinger facilities. As the wharfinger facilities grew they crowed up to the time when they are [fol. 1203] actually adjacent to this property. The only other lease on the property is a lease made to the Standard Oil Company which has been in existence for about 25 or 26 years, and it covers only the use of a bulk, fuel oil storage tank and pump which is used for the handling of bulk fuel oils from their plant to our properties by barged, pumped through a pipe line, stored into storage tanks and used for local delivery around the city of Oakland.

Q. And those are the only two industrial leases you have?

A. Those are the only two industrial leases we have.

Q. Do you have any other leases of any kind?

A. No, we have no other leases.

Q. Will you produce copies of those leases for the record?

A. We can; yes, sir; I might correct that. I don't believe we have a copy of that Standard Oil Lease. It is so ancient and so old, I think it was just a question of going on. I can check our records to see if we have. If we have, I will be glad to furnish it.

Q. I don't necessarily require file copies. If they are copies that are certified to be correct copies of whatever copy you have in your file that will be sufficient?

A. Yes, sir.

Q. From your experience as a terminal operator is it your opinion that the wharf demurrage rate should be a penalty rate?

The Witness: Read that question, please.

[fol. 1204] (The pending question was read by the reporter as above recorded.)

A. Well, it is our opinion that the wharf demurrage rate should not be based on cost. It should be in the nature of a penalty or a semi-penalty. It should not be prohibitive yet it should encourage the clearance of the dock within a reasonable length of time.

By Mr. Scoll:

Q. From your knowledge of the operations of your terminal and the practices of other terminal operations in the San Francisco Bay region can you state whether the present wharf demurrage rate actually constitutes a penalty rate?

A. The present wharf demurrage rate on our properties?

Q. Not only on your properties, but those which are in the published tariffs introduced in this record, with which I think you are probably familiar.

A. Well, I mean, do you mean in the published tariffs of the private operators or the published tariffs of the San Francisco terminals?

Q. Excluding the San Francisco Harbor Board, which has a peculiar tariff arrangement of its own, and taking only the East Bay Terminals, do you consider that the rates now in effect by private terminals in the East Bay and the Port of Oakland are penalty rates?

A. No. We don't consider those penalty rates. They are [fol. 1205] storage rates reduced, you might say, to a daily basis.

Q. Have you ever given any consideration as to what a proper penalty storage rate ought to be in the East Bay area?

A. Yes, I have.

Q. What would you say that is?

A. Well, it is my opinion that the question of a demurrage rate must be handled separately in the trade; that is, the eastbound and the westbound trade. I think that has been more or less recognized through the testimony of Mr. West here the other day, who testified as to the practices in the northwest, including Puget Sound and Portland, where they have a westbound rate and an eastbound rate that is 50 per cent of the westbound rate. It is also the practice on the San Francisco assigned docks, which was testified here today, that eastbound and westbound present two separate

problems. To my knowledge, the tariffs at Los Angeles are similar, and we feel that they are different entirely in the operation of the type of service that is required and the control you have over the cargo.

Q. Taking the westbound movement—by that you mean, do you not, inbound movement rather than just westbound?

A. Yes. Commonly we refer to the inbound—that is, coming in off of vessels—as westbound. The proper terminology would be inbound cargo and that going to vessels be referred to as outbound cargo.

[fol. 1206] Q. Eastbound cargo you refer to as the outbound?

A. As the outbound cargo, yes, sir.

Q. Taking the inbound movement, what do you think a proper wharf demurrage rate would be on that movement in the East Bay area?

A. Well, from the studies we have made of it and basing it on comparison and the results used, it should be probably in the neighborhood of five cents.

Q. That is, five cents per day per ton?

A. Yes, sir.

Q. Let us take the outbound movement. What is your opinion of a proper rate in connection with that movement?

A. I can't say that I have come to that definite conclusion on that, but I understand from the testimony of Mr. West the rates they set up there had answered the purpose, although I think his rate was possibly a little bit low. I understand the rates here in San Francisco answer the purpose, and, they vary with time. I don't know that the time element should vary the rate if it is a demurrage rate. I would probabaly say about 50 per cent of the westbound.

Mr. Graham: That is 2½ cents?

The Witness: I would say about that.

By Mr. Scoll:

Q. Is it your opinion that the rate should be on a daily basis or on a period basis?

[fols. 1207-1305] A. It is my opinion that the demurrage rates should be on a daily basis. The reason for that is that, if you put it on a period basis, after any one particular period is paid for there is no inducement or no reason why the cargo mover would remove his cargo regardless of what the length of that period is; that is, whether it is five days

or any other days. That is, after he has once paid the period it may remain there. If the penalty rate is made to encourage the removal of cargo, I think it should be made on the basis of daily computations. If it is a storage rate, I believe it should be based on a monthly term, plus a receiving and delivering charge.

* * * * * * *

[fol. 1306] S. M. Graham was thereupon called as witness for the Commission and, having been first duly sworn, testified as follows:

Direct examination.

By Mr. Differding:

Q. Will you give the reporter your name and business address, Mr. Graham, please?

A. S. M. Graham; Encinal Terminals; Alameda.

Q. What position do you occupy with Encinal Terminals?

A. I am the terminal agent.

Q. How long have you been so employed?

A. 15 years.

Q. What did you do prior to that time?

A. I took care of the revenue billing.

Q. How long have you been continuously employed by Encinal Terminals?

A. Fifteen years.

Q. And during all of that time have you been thoroughly [fol. 1307] familiar and had to do with the handling of wharf demurrage and free time practices and the rates and rules in connection therewith?

A. Yes.

Q. You were familiar with the wharf demurrage practices applicable at Encinal Terminals prior to filing of tariffs requested by the California Railroad Commission in 1929?

A. I am.

Q. What was the basis of wharf demurrage charges in effect prior to 1929?

A. The first rate that I can recollect is 12½ cents per ton per week. Prior to 1929 there were several other bases of rates which ended up in 1929 with a basis of cents per ton per day.

Q. Did that basis of cents per ton per day have your approval?

A. Well, the rates as I recall them were discussed and they may or may not have had our approval in all regards, but a competitive situation arose whereby all of the terminals were forced to accept these rates of cents per ton per day.

Q. The terminals you are referring to were those on the East side of the Bay?

A. That is correct.

Q. Principally the Port of Oakland, Howard Terminal?

A. That is correct.

[fol. 1308] Q. And at that time also the Parr Terminal Company operating facilties in Oakland Harbor?

A. That is correct.

Q. Since 1929 there has been little or any change in your wharf demurrage practices, isn't that correct, even up to the present time?

A. Very few changes.

Q. And there has similarly been little change, if any, in the free time periods granted?

A. That is correct.

Q. Has Encinal Terminals made any effort to adjust the wharf demurrage practices more in accordance with such costs as it may have found to conduct the operations?

A. Yes.

Q. And there has been little success, if any, in that direction?

A. None whatsoever.

Q. In connection with exhibit 61 in this case, which includes among other things an extended discussion of wharf demurrage practices and analysis of demurrage costs, do you find in your handling of wharf demurrage cargo that there is a cost for the checking of demurrage cargo on or to the shipper or consignee?

A. Yes.

Q. Also for the high piling and breaking down of cargo necessarily caused by the requirement of conserving space?

[fol. 1309] A. Yes.

Q. And also a miscellaneous charge for the moving, shifting or transfetring cargo to conserve space?

A. Yes.

Q. By the way, is it also true, Mr. Graham, that you have been in charge of the accounting practices and the books of Encinal Terminals for a long period of time?

A. Yes.

Q. And have had frequent occasions to make studies of those accounts for determining the costs of various types of services performed?

A. Yes.

Q. I show you pages 100 and 101 of exhibit 61, having to do with variable and non-variable overhead costs. Do they all represent items which are applicable on your facility to the handling of wharf demurrage cargo?

A. Yes.

Q. Do you agree with the statement appearing on page 96, which I will now read:

> "Thus, out of every 100 square feet chargeable to demurrage, 30 square feet of aisles and 10.5 square feet of waste areas are non-revenue producing, leaving 59.5 square feet as revenue producing."

A. Yes.

Q. You have made checks on your own account to support [fol. 1310] the answer you have just given?

A. Yes.

Q. I now turn to Diagram 1 of Encinal, exhibit 61, which is a plan of Encinal Terminals as it purportedly existed in 1936. Does that plan correctly portray the situation as it exists today?

A. Yes.

Q. In 1935 and 1936 it is indicated by exhibits 60 and 61 that certain warehousing operatings were conducted by Encinal Terminals. Are those operations still conducted today?

A. Yes.

Q. And they are conducted generally in what unit of your facility?

A. Partially in shed A and partially in shed C, with the larger portion of the warehouse operations in shed C.

Q. So you have for the storage of cargo on Encinal Terminals today your wharf demurrage rates and practices as indicated in your tariff, exhibit No. 72, and the public warehousing as indicated by exhibit 85, to which you are a participating party?

A. Yes.

Q. By "you" I mean Encinal Terminals.

A. That is correct.

Q. What is the usual practice followed by Encinal Ter- [fol. 1311] minals in placing goods within the areas used for public warehousing?

A. Well, when goods are held on the warehouse spaces usually they are held in Unit C and are contained within areas surrounded by fences and held separate from the transit operations in the balance of the Unit.

Q. A shipment when arriving by Intercoastal vessel and put to point of rest in the transit shed by the stevedores and you are subsequently instructed to place that in your public warehouse areas, how is that removed from the point of rest in the transit shed to the public warehouse area?

A. The employees of Encinal would take the goods from the first point of rest and physically move them into the warehouse areas.

Q. And, likewise, if goods were to be removed from the public warehouse areas for subsequent water movement, would your warehouse employees physically transport the goods from the public warehouse areas to a point of rest on the docks?

A. Yes.

Q. At no time have the Stevedores employed by the vessel had access to the public warehouse areas?

A. At no time.

Q. Did you hear the testimony of Mr. Ventre yesterday with respect to the handling of distribution accounts?

A. Yes.

[fols. 1312-1325] Q. I show you pages 106 and 107 of exhibit 61 which purport to illustrate a typical distribution account handled by a terminal company on wharf demurrage. Can you state that Encinal Terminals has had experiences of the kind shown on these two pages?

A. The Encinal Terminals has had experience of that kind.

Q. And they are today?

A. Not as much as in the past.

Q. Can you say that that may be partly answered by the fact that you have succeeded in persuading some of your users that a public warehouse basis is the proper basis for that type of storage?

A. That is correct.

Q. And you agree with Mr. Ventre in that respect?

A. That is correct.

Q. And yet you have others who still insist upon the cheaper wharf demurrage basis?

A. Yes.

* * * * * * *

[fol. 1326] Mr. Differding: I have one or two questions I overlooked.

By Mr. Differding:

Q. Isn't it true, Mr. Graham, that the rates covering the volume of your commodities handled on wharf demurrage have not been increased for the past four or five years?

A. Generally speaking, that is so. That is, any increases which would cover a volume of the commodities named in the tariff. There may have been one or two.

Q. But, generally speaking, that is a fact?

A. That is correct.

Q. And what has been the situation as to the increased cost to Encinal Terminals in providing wharf demurrage service?

A. Those costs have increased.

Q. Does that include the physical handling of the goods by dock labor, whether it is tranferring, high piling, or otherwise shifting the cargo?

[fol. 1327] A. It does.

Q. Including cleaning?

A. Yes.

Q. Checking of the cargo into and out of demurrage areas?

A. Yes.

Q. The billing, general office and overhead expenses?

A. Yes.

Q. How about property taxes?

A. Property taxes, I would say, would stay about the same over the period of years that we are talking about. However, the largest increase that we have had under the heading of "Taxes" are the so-called social security taxes.

Q. Payroll taxes?

A. That is correct.

Q. And there has been some increase in supplies and materials used?

A. Yes.

Q. Are there any others?

A. It appears generally in looking over the accounts that practically all of the costs of operation have increased in the last few years.

Q. What has applied to the cost of providing services to the vessel and set forth in your tariff as service charges and

dockage and to the cargo in the form of tolls have applied similarly to the cost providing wharfinger services?

[fols. 1328-1363] A. Yes. The costs throughout our service have been very materially increased.

Q. There has been no decrease in any of these costs?

A. None whatsoever.

* * * * * * *

[fol. 1364] Redirect examination.

By Mr. Differding:

Q. I have one question, Mr. Graham. After listening to your testimony I take it that you like certain of the other witnesses, who subscribe to the proposition that each of the users of your facilities, should pay in proportion to their use of those facilities as closely as possible as it can be obtained. Is that correct?

A. That's correct.

Mr. Differding: That is all.

Examiner Basham: You are excused, Mr. Graham.

(Witness excused.)

[fol. 1365] Mr. Differding: I will call Mr. Bailey.

Leon A. Bailey was thereupon called as a witness for the Commission, and having been first duly sworn, testified as follows:

Direct examination.

By Mr. Differding:

Q. Mr. Bailey, will you give the reporter your full name and business address, please?

A. Leon A. Bailey; 216 Pine Street.

Q. What is your business, Mr. Bailey?

A. Among other things I am Secretary of the Warehousemen's Association of the Port of San Francisco, and of the California Warehousemen's Association, and Tariff Agent for approximately 100 public utility warehousemen operating at different points in California.

Q. Will you describe, first, what the Warehousemen's Association of the Port of San Francisco is?

A. It's an unincorporated, voluntary trade association representing the best interests of the industry generally in San Francisco and Oakland.

Q. And, next, what is the California Warehousemen's Association?

A. That serves the same purpose except that it blankets the entire state.

[fol. 1366] Q. I show you Exhibits 85 and 86 in this proceeding and I ask you if you are not the Mr. L. A. Bailey appearing there as the publishing agent.

A. I am.

Q. And how long have you been publishing agent for the California Warehousemen's Association?

A. I have acted as tariff agent for the San Francisco and Oakland warehousemen since 1913.

Q. I notice on page 2 of Exhibit 85 some 20 or 25 names of participating warehouses and, as the record in this proceeding indicates, Encinal and Howard Terminals, are two of the public wharfingers who are also parties to your tariff. Are there any others engaged in the wharfinger business who are parties to this tariff?

A. No.

Q. I would like to ask you next, Mr. Bailey, in connection with Exhibit 86, which is your Warehouse Tariff No. 3-E and specifically with reference to Rule 10, which states among other things: "Rates named herein are considered special and compelled and influenced by competitive circumstances. Rates and commodities not shown herein will be found in California Warehouse Tariff Bureau, Warehouse Tariff No. 1-E C. R. C. No. 83 of L. A. Bailey, Agent, supplements thereto or reissues thereof," which is Exhibit 85. Can you tell me whether or not some of these special, [fol. 1367] compelled and influenced by competitive circumstances include that of the terminal operators on San Francisco Bay, practically all of whom are named as respondents in this proceeding?

A. Yes.

Q. Is it also true that in addition to these same terminal operators that also includes some of the practices and rates and charges in effect at the assigned piers at San Francisco?

A. Yes.

Q. Does it also include the two terminal facilities known as State and Golden Gate Terminals?

A. Yes.

Q. Can you state approximately how long ago it was that the warehouses in San Francisco first found it necessary to publish special depressed rates to meet the competition for demurrage cargo or storage cargo on the San Francisco piers?

A. That's rather difficult to answer. I will try and answer it this way. In the early years the wharf demurrage rates on the San Francisco water front were either the bulkhead storage rate at twelve and a half cents per ton per week, which involved transporting the freight to the land end and which, I believe, at that time was at two piers, one on each side of March Street; or straight penalty demurrage rate of 25 cents a ton for the first five days and 50 cents per ton for each succeeding five days. That competition [fol. 1368] was not considered necessary to compel the reduced warehouse rates; but with the establishment of the per ton per day rates on the Eastbay and the consequential establishment of warehouse service at the State Products Terminal, we began to feel the pinch of competition.

Q. If I recall the testimony of Mr. Gates correctly, they first set up the State Terminal with the special rates, where for the first time they departed from the basis of what had been in effect for many years, and was 1927 approximately the date that you had in mind?

A. I would say that is about it.

Q. And that was about the same time that you found it necessary to publish similar rates to meet the per day per ton basis in effect at the Eastbay terminals?

A. I think I could answer, "Yes." It is not so much from—our problem is not so much the actual depressed rates that we have published. It is the threat of competition which prohibits us from increasing rates based on increased costs to what we consider to be a compensatory level.

Q. Will you state briefly the history of the warehouse rate structure in the San Francisco-Oakland area for the last 13 years; that is, subsequent to 1937 to date.

A. I don't quite understand you.

Q. Have you been able to put in any general increases in [fols. 1369-1432] your warehouse charges?

A. Our first general increase in that period of time was on June 1, 1938, when it was absolutely necessary to increase our rates per se, because of sharply increased costs, particularly increased labor costs through higher wages and a decline in labor efficiency.

Q. And the result of that has been, if there were a spread in the rates previously, it has increased that spread; is that correct? Comparing the warehouse charges with the wharf demurrage charges at these various terminals?

A. Generally speaking, although in that increase there were instances where the increase was not sufficient because of the competition.

. . . . . .

[fol. 1433] Proceedings

Examiner Basham: Come to order, please.

Mr. Scoll: Mr. Examiner, at the hearing which adjourned in February several exhibits were introduced without copies being provided. I have had some copies made of these exhibits and I should like to distribute them now.

The first one is Exhibit 65. The next one is Exhibit 103. The next one is Exhibit 108.

There is a correction to be noted on these copies which I am distributing. Exhibit 108 was put in by Witness Bailey. These copies show that it was the Witness Ventre. So the Respondents who receive copies can make the correction on them.

Mr. Examiner, that completes the exhibits which were introduced at the February hearing for which no copies were available at the time, and so that Respondents now have copies of all exhibits which were introduced at that hearing, except Exhibit 61. It was understood that there were only a few copies available. It is a rather voluminous document and the Respondents, I understand, are willing to dispense with having additional copies made since most of them already have copies of that exhibit.

May we go off the record, please?

Examiner Basham: Off the record.

(Remarks outside the record.)

[fol. 1434] Mr. Scoll: Mr. Examiner, after the recess on Wednesday last I communicated with counsel for the several Respondents who are involved in this issue which we

are hearing now, the question of the cost of wharf demurrage or storage, and arranged that at this time the various accounting schedules and statements that are being prepared by the Respondents would be introduced. These accounting statements have been prepared by the Respondents for the purpose of making it unnecessary to produce their books and original records and secure the information by the examination of these books and records.

I have before me now the various accounting schedules of certain of the Respondents that were handed to me between last Wednesday and today, and I am going to proceed now to introduce these into the record, following which I plan to call upon those Respondents who have not furnished the accounting schedules that we discussed, and as they are produced I shall put them into the record.

This procedure will do two things:

1. It will secure for the record various accounting statements for all of the Respondents at the same time so that no one will have an opportunity during the recess before he produces his own statements to examine those of some other Respondent.

2. It will enable the various Respondents to prepare such [fol. 1435] questions as they want to ask of the various accounting officials of the Respondents and ask those questions at a future time.

I propose in that connection to put all of the accounting statements into the record at once this morning and then ask for a brief recess, during which time I can look at these accounting statements. I have not had a chance to look at them myself, and also counsel for the Respondents can look them over and then we can reconvene and proceed with such questions as may be necessary to explain whatever items have to be explained in these schedules.

Mr. Geary: In other words, there will be no cross examination of any witness until all of the accounting exhibits have been introduced on behalf of all of the Respondents?

Mr. Scoll: That is my intention. If that is agreeable to other counsel and to the Examiner I would like to proceed that way.

Examiner Basham: Go ahead.

Mr. Scoll: The exhibits I have first concern the Port of Oakland, and I should like to offer at this time a map of Oakland Harbor.

In connection with the Oakland exhibits, Mr. Examiner, it is understood between Mr. Jones, who is counsel for Oakland, and myself, that the various exhibits that are offered [fol. 1436] here by me are offered by the Commission and not by Oakland. Oakland stands on its position that the Commission has no jurisdiction over them in this case, and are merely furnishing this information at my request in order to be cooperative and enable us to finish the taking of testimony. So that it should be understood that the offering of these schedules and various diagrams concerning the Port of Oakland does not in any way constitute an admission by the Port on the question of jurisdiction.

I offer the map of the Port of Oakland, Mr. Examiner.

Examiner Basham: It will be received as Exhibit No. 118.

(The map referred to was marked "Commission's Exhibit 118" and received in evidence.)

Mr. Scoll: The next offer is a diagram of the Outer Harbor Terminal, Wharf Areas of the Port of Oakland. There are only two copies of this available at this time, but Mr. Jones has assured me that they can run off photostats of this in any number and that other copies will be forthcoming if the Respondents desire them.

For the purpose of the record and to explain to the Respondents, these are merely surveyor's diagrams in facsimile of the various structures named, the first one being the Outer Harbor Terminal Wharf Areas.

[fol. 1437] Examiner Basham: It will be received. Exhibit 119.

(The diagram referred to was marked "Commission's Exhibit 119", and received in evidence.)

Mr. Scoll: I see no extra copies, but if the Respondents want them they can obtain them from the Port of Oakland.

Mr. Jones: If I might interrupt, if you will indicate how many you need I shall bring them over tomorrow.

Examiner Basham: Off the record.

(Remarks outside the record.)

Examiner Basham: On the record.

Mr. Scoll: The next offer, Mr. Examiner, is Grove St. Pier, Inner Harbor Areas.

Examiner Basham: Received. Exhibit 120.

(The map referred to was marked "Commission's Exhibit 120", and received in evidence.)

Mr. Scoll: And, Mr. Jones, will you supply all of these diagrams, twenty copies of each?

Mr. Jones: Yes.

Mr. Scoll: Thank you very much.

The next one is Inner Harbor, 9th Ave. Pier.

Examiner Basham: Received. Exhibit 121.

(The map referred to was marked "Commission's Exhibit No. 121", and received in evidence.)

[fol. 1438] Mr. Scoll: The next one is Terminal Building —"C"—Areas of the Outer Harbor Terminal.

Examiner Basham: Received. Exhibit 122.

(The map referred to was marked "Commission's Exhibit 122", and received in evidence.)

Mr. Scoll: The next offer is a diagram entitled "Outer Harbor Terminal, General Plan."

Examiner Basham: Received. Exhibit 123.

(The map referred to was marked "Commission's Exhibit 123", and received in evidence.)

Mr. Scoll: The next offer is Outer Harbor Terminal, Typical Cross Section.

Examiner Basham: Received. Exhibit 124.

(The map referred to was marked "Commission's Exhibit 124", and received in evidence.)

Mr. Scoll: The next one is Inner Harbor Terminal, Typical Cross Section.

Examiner Basham: Received. Exhibit 125.

(The map referred to was marked "Commission's Exhibit 125", and received in evidence.)

Mr. Scoll: The next offer is Port of Oakland Operating Report, Fourth Quarter, Twelve Months' Period Ended June 30, 1940, Fiscal Year 1939-1940.

Examiner Basham: It will be received as Exhibit 126.

[fol. 1439] (The operating report referred to was marked "Commission's Exhibit 126", and received in evidence.)

Mr. Scoll: Mr. Examiner, I have several schedules which are details supporting Exhibit 126, and I believe

they should be numbered in the record as "126-A", "B," and so forth, and I shall offer them with that thought in mind.

The first one is Port of Oakland Expenses, Fiscal Year 1939-40, which is a break-down of the accounts labeled "Personal Service," "Supplies & Materials," "Light, Power, Heat & Water," and so forth. I will offer that as Exhibit 126-A.

Examiner Basham: Received.

(The schedule referred to was marked "Commission's Exhibit 126-A," and received in evidence.)

Mr. Scoll: The next schedule is entitled "Port of Oakland Construction Costs of Structures," and it is a break-down of accounts appearing in 126 and should be labled "126-B."

Examiner Basham: Received.

(The schedule referred to was marked "Commission's Exhibit 126-B," and received in evidence.)

Mr. Scoll: The record should show, Mr. Examiner, that this schedule, Exhibit 126-B, in addition to containing a break-down of construction costs also contains detail of maintenance expense for the structure with which we are [fol. 1440] concerned.

The next offer, Mr. Examiner, is an explanation of the distribution of the allocation of accounts in connection with the Port of Oakland accounting system. It is in the form of a letter dated October 5, 1940 to Mr. Carlon, signed R. N. Ricketts, Chief Port Accountant.

Examiner Basham: Received. Exhibit 127.

(The letter referred to was marked "Commission's Exhibit 127", and received in evidence.)

Mr. Scoll: The next offering, Mr. Examiner, is a statement showing the unit costs of pier and wharf construction of the Port of Oakland. It is a one-page letter-size statement dated October 5, 1940.

Examiner Basham: Received. Exhibit 128.

(The statement referred to was marked "Commission's Exhibit 128," and received in evidence.)

Mr. Scoll: The next offering, Mr. Examiner, is a chart of the accounts of the Port of Oakland. There are only

an original and one copy of this. It is merely an outline of the accounts as they are kept by the Port of Oakland. If copies are desired they can be furnished.

Examiner Basham: Received. Exhibit 129.

(The chart referred to was marked "Commission's Exhibit 129," and received in evidence.)

Mr. Scoll: I might state that, as indicated, it is the chart [fol. 1441] of the expense accounts only.

That concludes the schedules, diagrams and other documents that I have to offer in connection with the Port of Oakland at this time.

The next offer is a determination of wharf demurrage cost of Howard Terminal based on the formula of Ford K. Edwards. This was prepared by Howard Terminal at my request and was furnished to me in time so that I could have photostatic copies made for the other Respondents.

Examiner Basham: Received. Exhibit 130.

(The document referred to was marked "Commission's Exhibit 130," and received in evidence.)

Mr. Scoll: The next offer is a summary of the accounting data contained in detail in the determination of wharf demurrage cost of Howard Terminal based on the Edwards formula.

Examiner Basham: Received as Exhibit No. 131.

(The summary referred to was marked "Commission's Exhibit 131," and received in evidence.)

Mr. Scoll: Mr. Examiner, that completes the schedules that were delivered to me before this hearing. I should like now to ask for a brief recess so that I can collect the rest of them from the rest of the Respondents here and put them in.

Examiner Basham: We will have a five-minute recess.

[fol. 1442] (A short recess was taken.)

Examiner Basham: Come to order, please.

Mr. Scoll: The next offer, Mr. Examiner, is a folder of the Parr-Richmond Corporation showing the location and detail of the Parr-Richmond facilities.

Examiner Basham: Received. Exhibit 132.

(The folder referred to was marked "Commission's Exhibit 132", and received in evidence.)

Mr. Scoll: The next is a statement showing total revenues and expenses of Parr-Richmond Terminal Corporation for the years 1935 to 1939, inclusive.

Examiner Basham: Received. Exhibit 133.

(The statement referred to was marked "Commission's Exhibit 133", and received in evidence.)

Mr. Scoll: The next offer is Balance Sheet as of December, 1939, two pages, of the Parr-Richmond Terminal Corporation.

Examiner Basham: Received. Exhibit 134.

(The balance sheet referred to was marked "Commission's Exhibit 134", and received in evidence.

Mr. Scoll: The next offer, Mr. Examiner, is a 15-page statement prepared by the Board of Harbor Commissioners at my request and containing all of the accounting information which we requested them to furnish and worked out by the accountant of the Board of Harbor Commissioners in [fol. 1443] cooperation with Mr. Carlon. Attached to it is a letter of transmittal dated October 5, 1940 addressed to the United States Maritime Commission, "Attention: D. E. Scoll", signed by M. H. Gates, Secretary.

Examiner Basham: Received as Exhibit 135.

(The statement referred to was marked "Commission's Exhibit 135", and received in evidence.)

Mr. Kilkenny: Mr. Scoll, it is understood, is it, that all of these exhibits that you are offering concerning the Board of State Harbor Commissioners is subject to the same objection as to jurisdiction as heretofore made?

Mr. Scoll: Yes, sir. This proffer by you, as far as I am concerned, is not to be considered as an admission that the Maritime Commission has jurisdiction over the Board of Harbor Commissioners for the purpose of this case. We reserve that question for argument later.

Mr. Kilkenny: And it is understood, too, that this is the Commission's proffer?

Mr. Scoll: Yes.

Mr. Kilkenny: You are putting it in evidence and not the State Harbor Board?

Mr. Scoll: That is right. It is offered by me, as attorney for the Commission, and it was prepared by your staff.

Mr. Kilkenny: Yes.

[fol. 1444] Mr. Scoll: It is understood, however, that in connection with all of these proffers by the various terminals, including the public terminals, that they will have available persons who are familiar with the accounts and with these schedules to answer questions.

Examiner Basham: Received. Exhibit 135.

Mr. Scoll: May we go off the record for a moment.

Examiner Basham: Yes. Off the record.

(Remarks outside the record.)

Examiner Basham: On the record.

Mr. Scoll: Copies will be made available of Exhibit 135 and distributed to the Respondents as soon as we can get them.

In addition to Exhibit 135, the accounting schedules of the Board of Harbor Commissioners, there are some other exhibits in the way of diagrams and maps of the San Francisco terminals that will be available and be put into the record later.

The next offer is a statement showing schedule of receipts, revenues and expenses of Stockton Port District for the fiscal year July 1, 1939 to June 30, 1940.

Examiner Basham: It will be received as Exhibit 136.

(The statement referred to was marked "Commission's Exhibit 136", and received in evidence.)

[fol. 1445] Mr. Scoll: The next offer is a determination of wharf demurrage cost of the Port of Stockton, which has been prepared on the Edwards formula. It has been introduced into the record as Exhibit No. 63. There is only the original at this time and I will offer it with the request for leave to withdraw it and make copies for the Respondents.

Examiner Basham: You say it is already in the record as Exhibit 63?

Mr. Geary: The formula is in as Exhibit 63.

Mr. Scoll: The formula is in as Exhibit 63 and this is the application of the formula to the accounts and facilities of the Port of Stockton.

Examiner Basham: Received as Exhibit 137.

(The document referred to was marked "Commission's Exhibit 137", and received in evidence.)

Mr. Scoll: The next offer is a statement showing the tonnage handled over the ocean terminal wharves of the Port of Stockton for the fiscal year 1939-40 and the calendar year 1939-40.

Examiner Basham: Received. Exhibit 138.

(The statement referred to was marked "Commission's Exhibit 138", and received in evidence.)

Mr. Scoll: Mr. Townsend, does the Edwards formula study contain the number of tons of cargo that have been held on storage or wharf demurrage during the year?

[fol. 1446] Mr. Townsend: I am sure I don't know. Isn't that a question that you can take up when you get somebody on the stand, or do you want an answer now?

Mr. Scoll: If it doesn't, then I would like to have somebody prepared to testify with that information.

Mr. Townsend: I understand it does contain what you want. It is complete.

Mr. Scoll: That question is also directed at the other Respondents. I might say at this time that prior to the hearing a letter was sent to each of the six Respondents who are concerned with this cost issue requesting certain data in connection with commodities handled under wharf demurrage and wharf storage and amounts or volume of commodities. After some discussion with several of the Respondents I decided to withdraw that request because it would disclose in too great a detail the business of the Respondents, and subsfituting for that request I have asked each of them to be prepared to put into the record an oral or a written statement which will show, first, the tons of commodities handled over the terminal facilities for the period which the income and expense statement covers; and, secondly, the volume in tons of cargo on wharf storage or wharf demurrage during the same period.

Mr. Geary: Speaking on behalf of the Encinal Terminals, I can definitely say that that is reflected in Dr. Edwards' [fol. 1447] formula in an exhibit which we have handed to Mr. Scoll.

Mr. Graham: On the last page.

Mr. Townsend: As I understand, that is line 43, Schedule E of the formula.

Mr. Scoll: Thank you very much.

Mr. Townsend, is this the duplication of what is in the formula?

Mr. Townsend: As I understood it, you wanted a total statement of all tonnage handled over the ocean terminal wharves. That is what appears in Exhibit 138 which you are now distributing. Now, the statement that appears in the Edwards formula is the tonnage that is on wharf demurrage.

Mr. Scoll: Then I have yet to receive from each of the Respondents, except Stockton, a statement showing the total tons handled over the terminal wharves for the fiscal period covered by the income and expense statement.

Mr. Townsend: Mr. Scoll, before you proceed, my attention has been called to an error in Exhibit 138. The second line of figures, instead of reading "Calendar year 1940", should be "Calendar year 1939." May that be corrected?

Mr. Scoll: I want to qualify my statement about not receiving the information concerning the total tons handled [fol. 1448] over the terminal wharves by the other Respondents than Stockton. I have that information for San Francisco. So that leaves it yet to be received from Encinal, Howard, Oakland and Parr-Richmond.

Mr. Graham: Do you want that in exhibit form or can it be testified?

Mr. Scoll: It doesn't have to be in exhibit form. Whoever testifies to the schedules can furnish that information.

The next offer, Mr. Examiner, is a diagram entitled "Port of Stockton Comprehensive Terminal Plan."

Examiner Basham: Received. Exhibit 139.

(The diagram referred to was marked "Commission's Exhibit 139", and received in evidence.)

Mr. Scoll: The next offer, Mr. Examiner, is an accounting study by the Encinal Terminals showing the cost of wharf demurrage based on the Edwards formula. Like the study of Stockton it, too, is an original, which consists of the Edwards formula in blank filled in in ink. I will have to offer this and request the Examiner for leave to withdraw it and have copies made.

Examiner Basham: Received. Exhibit 140.

(The accounting study referred to was marked "Commission's Exhibit 140", and received in evidence.)

Mr. Scoll: The next item I am offering, Mr. Examiner, is [fol. 1449] a statement of the revenues and expenses for the year 1939 of the Encinal Terminals.

Examiner Basham: Received. Exhibit 141.

(The statement referred to was marked "Commission's Exhibit 141", and received in evidence.)

Mr. Scoll: The next offer is Encinal Terminals' balance sheet as of December 31, 1939.

Examiner Basham: Received. Exhibit 142.

(The balance sheet referred to was marked "Commission's Exhibit 142", and received in evidence.)

Mr. Scoll: The next offer, Mr. Examiner, is a statement showing the total tons handled on wharf demurrage from November 1, 1938 to and including October 31, 1939 by number of days. This was prepared by Encinal Terminals at my request to provide in the record a statement which will show a typical year of terminal operation to show the number of days in and the number of days each ton stays on storage.

Let me say, in offering this, that the Encinal Terminals in doing this did so at my specific request, and while I didn't ask any of the other terminals to do it I did not do so because it seemed, if I could get it for one terminal, it would be unnecessary to ask all the others to furnish it. The material is purely statistical and does not concern the business of Encinal Terminals.

[fol. 1450] Examiner Basham: Received. Exhibit 143.

(The statement referred to was marked "Commission's Exhibit 143", and received in evidence.)

Mr. Scoll: Mr. Examiner, that concludes the schedules that we now have ready for the record.

Mr. Graham: Mr. Scoll, may I ask a question on this 143? As I understand your offer, this is merely an offer to show the situation at Encinal and it does not purport to show an offer of what is typical of all terminals?

Mr. Scoll: No, that is true. It shows the situation at Encinal.

Mr. Graham: I haven't any idea what would be "typical" but I just wanted to know what your offer was.

Mr. Scoll: I discussed this with all the terminals, I think I did, and the only terminal which was prepared to or could make the study in a short time from its records was Encinal.

Mr. Examiner, that is all that is ready now. May we adjourn until two o'clock, Mr. Examiner?

Examiner Basham: We will now adjourn until 2:00 o'clock this afternoon.

(Whereupon, at 11:15 a. m., a recess was taken until 2:00 p. m.)

[fol. 1451] Afternoon Session

2:10 p. m.

Examiner Basham: You may proceed.

Mr. Scoll: Mr. McCarl.

Mr. Read: Mr. Examiner, before we proceed further, for the purpose of the record I would like to state that my appearance in the original hearing was for Swayne & Hoyt. At this hearing I am not appearing for Swayne & Hoyt but for the Parr-Richmond Terminal Corporation.

Merritt D. McCarl resumed the stand and further testified as follows:

Direct examination.

By Mr. Scoll:

Q. Mr. McCarl, you have been previously sworn, have you not?

A. I have.

Q. I will show you Exhibit 119, which is a diagram of Outer Harbor Terminal Wharf Areas. Will you, with this pencil, mark on that diagram the space where shipside storage and demurrage is available?

A. Mark it with an "X"?

Q. Yes, mark with an "X" that space.

A. I would have to mark the whole thing because the storage is sometimes held in all of the transit shed space.

[fol. 1452] Q. Then it would be in Transit Shed Space No. 1, as indicated on Exhibit 119?

A. That's right.

Q. Would it be the whole of Transit Shed No. 2 as shown on Exhibit 119?

A. That's right.

Q. Are there any other spaces?

A. There are certain types of cargo that are held at times in the open wharf area.

Q. And that is an area, is it not, which is open to the sky? There is no shed over it?

A. That is correct.

Q. I show you a copy of Exhibit 120, the Grove Street Pier Inner Harbor Area. Will you indicate what areas of the Grove Street Pier as shown on Exhibit 120 are used and available for wharf storage or demurrage?

A. All of the space inside the sheds, both the east shed and the west shed, are available; likewise the space in front of the pier. The open space is available and used.

Q. When you say "in front" where would that front space be on the diagram?

A. It will be on the land side on the opposite end, that portion marked "outside face of quay wall."

Q. So that there is space which begins at the line marked "outside face of quay wall" going over to the left hand [fol. 1453] side of the diagram?

A. I will have to correct that. I have got this turned around in my mind here. The entire area of the pier inside the shed referred to on the exhibit as "East shed" and "West shed" is available and used for storage cargo; also the area in front of the pier designated on the exhibit "outside face of quay wall" is also available and utilized for storage cargo.

Q. That latter area, the area in front that you are speaking of, that is outside area?

A. Outside area.

Q. How far back from the outside face of the quay wall does that extend, approximately?

A. Oh, I would say about 150 feet.

Q. I will show you a copy of Exhibit 121. Will you indicate or describe what areas on that diagram are used for wharf storage and demurrage?

A. I might state that the shedded area of this particular facility is utilized 50 per cent by the McCormick Steamship Company for the handling of its transit cargo and also the retention of storage cargo, and all of the outside area is utilized for the transit storage handling of lumber.

Q. Will you, with this pencil, on Exhibit 121 mark off the area that is used by the McCormick Steamship Company?

A. (Marking off on diagram.)

[fol. 1454] Q. As you have marked it, it is the westerly half of Transit Shed No. 1 that is marked with an "X"?

A. That is correct.

Q. Will you take the pencil and indicate what the outside areas are that you are referring to?

A. (Marking off on diagram.)

Q. You have marked the westerly portion of the diagram of the 9th Avenue Pier which is described as "Concrete open Wharf", "Open Timber Wharf Extension" and "Concrete Bulkhead" and "Oil Macadam on Fill"? You have marked that with an "X". That is all outside area, is that correct?

A. That's correct, and used for lumber and lumber products.

Q. And when you speak of "outside areas" throughout in describing these diagrams you are describing areas which are open to the weather and which are not covered by any shed?

A. That's correct.

Q. Now, Terminal Building "C", which is described on Exhibit 122, is a building of how many stories?

A. Two.

Q. And it is separated from the Outer Harbor by a roadway, is it not?

A. Yes.

Q. And that roadway is shown on Exhibit 122 as "Mar-[fol. 1455] ginal St." is that correct?

A. (No response.)

Q. I will withdraw the question. Terminal Building "C" is separated from the Outer Harbor by Wharf Street, is that correct, as shown on Exhibit 123? Wharf Street and Terminal Street?

A. Separated by Terminal Street.

Q. And Wharf Street?

A. And Wharf Street. That's correct.

Q. I believe you stated when you were on the stand before that Terminal Building "C" is used for wharf storage only occasionally, that ordinarily space is contracted for on lease or licensing arrangement. Is that correct?

A. That's correct. Where you say "lease", that is 30-day rental arrangement.

Q. Do you have any rental arrangements for any longer period of time?

A. No, we do not.

Q. You have the bean cleaner in Terminal Building "C", have you not?

A. That's correct.

Q. And what is his arrangement?

A. That is a 30-day rental arrangement.

Q. Which is renewable every 30 days?

A. It is according to the tariff. The rates are set forth [fol. 1456] in his tariff and he is assessed the charges set forth in the tariff for 30 days or a fraction.

Q. I show you a copy of Exhibit 126, the operating report of the Port of Oakland, fiscal year ending June 30, 1940. I withdraw that question. I think I will call Mr. Ricketts on Exhibit 126.

Mr. McCarl, does the City of Oakland have a civic development policy, one of the aims of which is to encourage the location of industries in Oakland?

A. It does, yes.

Q. And were the Port of Oakland facilities built to aid in carrying out that policy?

A. Well, I would say from my own opinion, yes, along with other items.

Q. And the Port Commissioners in determining the policies to govern the operation of the terminals take into consideration this development policy of the City?

A. Yes, particularly industries located in the proximity to the terminals so far as the Port Commission is concerned.

Q. A considerable volume of tonnage which moves across the facilities of the Port of Oakland inbound, we will say, is destined to points beyond the City of Oakland, is it not?

A. It is quite a substantial proportion, but I would say that the tonnage in the other direction, the greater percentage originates outside of the City boundary.

[fol. 1457] Q. That is, while a considerable portion of the inbound tonnage moves to points beyond Oakland in the interior an even larger portion of the outbound tonnage comes from points in the interior beyond Oakland, is that correct?

A. That's right.

Q. Does this general policy of the City of Oakland, which you have mentioned in connection with the policy of the Port, also enter into the question of the leasing of the facilities?

A. The leasing of facilities other than transit sheds?

Q. Yes.

A. Yes.

Q. Most of the goods that are stored on the Oakland Terminal facilities, either stored on demurrage or wharf storage, are either discharged by vessels at the terminal or eventually loaded on to vessels at the terminal, isn't that correct?

A. By far the largest percentage, yes. There may be a little tonnage that might not move by water, but we endeavor to limit that type of movement.

Q. And the goods which are loaded on to or discharged at Oakland Terminals are transported to or from points outside the State of California, are they not?

A. Yes.

Q. That is, the outbound?

[fol. 1458] A. The water movement——

Q. (Interrupting) The water movement?

A. (Continuing)—is beyond California, yes.

Q. Do you know what was the number of tons of goods which were handled at the Oakland Terminal facilities during your fiscal year 1939-1940?

A. I just obtained that information over the telephone, not knowing previously for sure that you wanted the information. The total of all of the facilities operated directly by the Port was 1,170,701 tons.

Mr. Read: Pardon me. For what period?

The Witness: Fiscal year ending June 30, 1940.

Mr. Graham: That is in and out?

The Witness: In and out; total tonnage. I can break that down by terminals, if you prefer to have it.

By Mr. Scoll:

Q. Would you do that, please?

A. We have segregated the tonnage handled at the 9th Avenue Terminal because of the special arrangement at that facility. The tonnage handled at 9th Avenue, exclusive of McCormick, is 246,074 tons; McCormick tonnage, 101,591 tons; and the balance of 821,036 tons was handled at the Outer Harbor Terminal, Grove and Market, and Livingston and Dennison.

Q. Have you broken it down as between Outer Harbor and [fol. 1459] Grove Street?

A. We haven't, but we can break it down in any way that you might want. I haven't the figures here at this time.

Q. Will you furnish for the record the break-down of the total tonnage which you have given, 1,170,701, showing the amounts handled over Outer Harbor and Grove Street? What was that last one you mentioned?

A. Livingston and Dennison, where lumber is handled only; Livingston and Dennison Piers.

Q. Will you give us that too?

A. Yes.

Q. Will you also give us a statement showing for each of the terminals we have been considering, namely, 9th Avenue, Grove Street, Outer Harbor, and Livingston and Dennison, the number of tons stored during the fiscal year 1939-1940 showing what proportion, if any, was high-piled?

A. That would probably require some time.

Q. You can furnish that after the hearing.

A. That would probably require some time to compile. Yes.

Mr. Jones: Mr. Scoll, if I may interpolate at this point, I understand that it will take a matter of going through the individual billing records at each of the terminals and it will require at least a month's time to get that information. It has not been compiled in any form at this time. If you want us to do it, we can prepare it and submit it later [fol. 1460] on after the hearing. But we couldn't do it otherwise.

Mr. Scoll: It will be all right if it comes after the hearing.

By Mr. Scoll:

Q. Mr. McCarl, I understand from your previous testimony that a portion of the expenses of the Port of Oakland are met by taxes. Is that portion the amortization and interest on bonds?

A. That's correct. That is arranged for through the City Council, yes.

Q. Do you happen to know what kind of a tax is assessed for this purpose? Is it a special property tax levied by the Port or is it merely a portion of the taxes assessed by the City of Oakland on all properties?

A. It is my understanding it is a special assessment to take care of the Port charges.

Mr. Jones: I could correct that, Mr. Scoll. It is just part of the general tax levy.

The Witness: What I meant to say is, that a definite amount was figured for the Port but it came out of the general tax levy.

Mr. Scoll: I have a couple of questions on this matter of taxes, Mr. Jones. How would you prefer that I do it? Shall I put them to the witness?

[fol. 1461] Mr. Jones: I don't know what they are. If Mr. McCarl can answer them he will be very glad to do so.

By Mr. Scoll:

Q. Just one or two more questions. How is the amount of the tax determined?

Mr. Jones: Do you want me to answer that?

A. The interest on the bonds is a definite amount.

Mr. Scoll: Maybe Mr. Jones can help us out on that.

Mr. Jones: I might state this: That each year, of course, there is a definite number of bonds that are maturing. So, first, the Council has to set aside sufficient funds to take care of that. Then, of course, is the interest on the outstanding bonds, and the sum of those two figures is the amount which goes in to the general tax levy.

Mr. Scoll: And that is a part of the annual budget of the City of Oakland?

Mr. Jones: That is correct.

Mr. Scoll: Are the accounts of the Port of Oakland consolidated with the City of Oakland for budgetary purposes?

Mr. Jones: I am not quite sure that I understand your question. We make up a separate budget and all the expenditures of the Port Department are under the Board of Port Commissioners without any check by the City Council.

[fol. 1462] Mr. Scoll: Well, the City of Oakland keeps its own budget, does it, not?

Mr. Jones: That's right.

Mr. Scoll: And it includes in its budget the amortization and interest payments for the Port of Oakland?

Mr. Jones: For the bonds only.

Mr. Scoll: For the bonds?

Mr. Jones: Yes.

Mr. Scoll: Does it include anything in its budget for operating expenses of the Port of Oakland?

Mr. Jones: It does not.

Mr. Scoll: I have no further questions of Mr. McCarl.

Mr. Geary: May I ask this question of you, Mr. Jones, in relation to what you were just answering Mr. Scoll? If the operations of the Harbor Department were conducted at a loss would the City of Oakland make up that loss?

Mr. Jones: Yes. The charter so provides.

Mr. Geary: In addition to the redemption of the bonds and the interest on the bonds?

Mr. Jones: Yes.

Examiner Basham: Any further questions?

Cross-examination.

By Mr. Read:

[fol. 1463] Q. I would like to ask one or two, if I may. As the Traffic Manager of the Port of Oakland, is it the policy of the Commission to consider revenues from demurrage in the sense of added revenue?

Mr. Geary: What do you mean by the phrase "added revenue", Mr. Read?

Mr. Read: Above the revenue that is generally derived from pier operations.

A. Well, I would say that the storage is considered more or less incidental to the main purposes of the operation of the facilities, which are to take care of transit cargo, deriving the principal revenues of service charges, dockage and tolls therefrom. Whatever revenue we can derive from storage we would consider that as added revenue, if that is what you mean?

By Mr. Read:

Q. Your storage based both upon tonnage and revenue is small in relation to the total operation in tons or in revenue, is it?

A. Yes. It would be a small proportion of the total revenues.

Q. So that you have earned certain revenues for other services rendered, and if the cargo remains on the dock it is just a little extra revenue for the Port?

A. That's right.

[fol. 1464] Q. It would not be derived if the cargo were removed within the free time?

A. As a rule we don't need all of our space for transit cargo because we have to have enough space available to take care of full cargoes that might be discharged from the vessels, and we like to derive some revenue from storage for the space during the interim between vessels.

Q. In your capacity as Traffic Manager I suppose that you handle all negotiations with shippers about the rates for any of the services that the Port renders?

A. Yes, that's correct.

Q. And from your experience in that capacity would you be fearful that anything but a very moderate increase, generally speaking, in the storage rates might drive that business away from the terminal entirely?

Mr. Geary: I am going to object to that, Mr. Examiner, upon the ground that obviously it is conjectural.

Mr. Read: That is all it is, and from his experience I am asking for an opinion.

Mr. Graham: I think it is subject to the further objection that there is no definition as to what the term "moderate" means. His idea of "moderate" may be entirely different than the person who is asking the question.

Examiner Basham: The objection is overruled.

Mr. Scoll: That also has been pretty thoroughly covered [fol. 1465] in the record, Mr. Examiner. We had Mr. McCarl on for three days and we explored his views on this question backwards and forwards, and if we open the matter up again we will probably be doing the same thing for three or four days.

Examiner Basham: Just a moment! The objection has been overruled. Suppose you answer the question? and we will drop the matter.

A. Yes. From the information that I have received I think that any considerable increase in the storage rates and the change of the storage basis would very materially affect the amount of goods that were to remain in storage.

By Mr. Read:

Q. And if that were lost do you suppose that it would probably also deprive you of other revenues that are derived by reason of the storage?

A. Yes, I do.

Q. And if they were lost would you be able to recover that loss from any of the other services that you render?

A. No. If we lost the tonnage we would lose all the revenues.

Q. For that reason, Mr. McCarl, is it or is it not your opinion that storage charges instead of being built up on this theory expressed by Dr. Edwards should be instead treated as added traffic?

[fol. 1466] Mr. Scoll: Mr. Examiner, Mr. McCarl has already stated that on the record twice, and if Mr. Read would like to I will refer him to the page where Mr. McCarl's answer to that same question already appears. I don't think we are getting anywhere to cover this thing over again.

Mr. Read: I won't have but one or two more questions, Mr. Examiner.

Examiner Basham: Objection overruled.

The Witness: Would you repeat that question, please?

(The question referred to was read by the reporter.)

A. Answering the question as I understand it to be intended——

Mr. Geary: (Interrupting) How do you understand it to be intended?

The Witness: It says "Added traffic".

Mr. Geary: What do you understand by the phrase "Added traffic"?

By Mr. Read:

Q. Let me ask you, Mr. McCarl, Have you ever heard the railroads express the theory of added traffic in making freight rates?

Mr. Scoll: Mr. Examiner, we have gone into this, and in one second here I will show you the page of the transcript where he can find that pretty fully discussed already. I see no purpose served in going back over those questions [fol. 1467] again. We will get the same answers.

Mr. Read: Will you please let the witness answer this one question?

A. I think I can answer that very shortly. I don't agree with Dr. Edwards in his allocation of the overhead charges,

and I think that the storage expense, the principal charges having to receive the cargo and to deliver the cargo—the principal expenses are against the other items of revenue in that the storage expense in the case of the Port of Oakland at least is just for the space occupied primarily.

By Mr. Read:

Q. And for that reason you don't want to assign these miscellaneous allocations that Dr. Edwards has set up?

A. Yes. I think the principal part of the expenses should go against the items involving the transit movement, which is service charges, dockage and tolls.

Mr. Read: That is all.

Examiner Basham: Any further questions?

Mr. Townsend: I have just one or two questions.

By Mr. Townsend:

Q. In certain figures of total cargo over the docks that you gave did you include any pipeline cargo, or do you have any of that?

A. That includes all cargo including pipeline cargo.

Q. And what pipeline facilities or connections do you have [fol. 1468] at the Port of Oakland?

A. There are some pipe lines at the Outer Harbor Terminal through which fuel oil and gasoline pass in considerable quantities.

Q. That is solely at the Outer Harbor?

A. That's correct, yes. There is a little bit at Dennison Street.

Q. Are those pipelines owned by the Port of Oakland?

A. No, they are not; by private interests.

Q. Is there any way that you can give us the portion of the total figure that you previously gave that would be covered by this pipeline cargo?

A. I could have that information for you in the morning. I don't have the figures with me right now.

Mr. Townsend: I think it should be in the record if those facilities are not owned by the Port of Oakland.

Mr. Scoll: So do I, Mr. Townsend. I didn't know that that figure included pipeline cargo, and I would like to have Mr. McCarl segregate that.

The Witness: I will have that available tomorrow.

By Mr. Townsend:

Q. Will you please state who owns the rail track facilities at the Grove Street dock?

A. The Port of Oakland; the City.

Q. How much trackage does that include starting, we will [fol. 1469] say, from the waterfront?

A. I believe possibly the exhibit shows. I don't have the figures in my head.

Q. Well, just generally, how far back does it go from the waterfront?

A. At Grove Street the trackage around the pier on both sides and on the face of the pier would——(pause)

Q. Does it go back across the street and include the area where you sometimes store pipe?

A. Yes. It might be referred to as the Embarcadero.

Q. Does the ownership of the tracks by the Port of Oakland, if you know, commence approximately where the spur track joins the main line tracks and continue on down to the property line of the Howard Terminal?

A. I think that would be a proper description.

Q. What is the situation with respect to the ownership of the rail track facilities at the other docks?

A. The trackage serving the terminal facilities are owned by the Port of Oakland.

Q. Is that true of the 9th Street Dock?

A. Yes.

Q. And at the Outer Harbor?

A. That's correct.

Q. At what time of the year does the greatest amount of wharf storage occur at the Port of Oakland?

[fol. 1470] A. Oh, I believe we would probably say at the end of the year.

Mr. Scoll: You are speaking of calendar year now?

The Witness: Calendar year, yes.

By Mr. Townsend:

Q. Over how long a period does the principal storage occur?

A. Well, of course the heavy movement commences—pineapple in July and other commodities, say, in August; and storage continues rather heavily until tax period, about the first of March.

Q. Well, would you say that the storage continues heavy throughout the period commencing in August and extending to early in March?

A. I would say that that is the heaviest period. Different commodities, of course, are stored at different times of the year.

Q. Have you found in the operation of the different facilities of the Port of Oakland that the storage of cargo on the docks interferes in any way with the handling of transit cargo?

A. I would say, No, in so far as the facilities operated by the Port of Oakland are concerned.

Q. And that is true even during this busy season?

A. That's correct.

[fol. 1741] Q. If you had one of your facilities, say, the 9th Avenue dock, filled completely with wharf storage cargo you would not be able to use that dock for any other purpose, would you?

A. No, certainly not.

Q. And under those circumstances the entire facilities, including the apron and the transit shed and the wharf part, would really have to be charged against the stored cargo, is that correct?

A. If the conditions were as you say, but we wouldn't permit the storage of such large volume of cargo. Our tariff gives us the right—it says that the storage of goods is optional with the management.

Q. What is your general practice with respect to wharf storage in so far as the use of the different facilities is concerned? Do you try to have most of your wharf storage occur on one facility, or just what do you try to do?

A. Wherever we feel that it can be accommodated without unnecessarily interfering with the movement of transit cargo. We like to retain all the storage cargo we can, but we have had occasions when it was asked that it be removed to make room for transit cargo.

Q. What I meant to develop was whether you try to concentrate your wharf storage cargo in any one particular facility, or do you just take it as it comes and put it in one [fol. 1472] facility or another as the case may be?

A. We just take it in any facility on inbound water movement wherever the stevedores discharge it. Sometimes we try to control the locations that it is to be discharged into

where we can accommodate storage to better advantage than some other facility, but it is very seldom we have to move any storage cargo. You might say, very rarely do we have to handle it after it is once deposited by the stevedores in the case of incoming cargo or by car unloaders or by truck carriers in the case of outbound movement.

Q. By that do you mean that you have generally idle space on all your facilities that can accommodate the wharf storage cargo?

A. That is correct.

Q. You say it is very seldom that you have to move wharf storage cargo from one storage to another. Do you ever have to move any?

A. We do sometimes, yes.

Q. And under those conditions would you have a case, possibly, where you might have to move some cargo that is stored on the Grove Street dock to Outer Harbor?

A. No; just from one unit of a terminal to another unit. For instance, moving it from the transit shed of Outer Harbor Terminal to Terminal Building "C".

Q. And under those circumstances is the cost of that [fol. 1473] movement absorbed by the Port of Oakland or is it an additional charge made against the owner of the cargo?

A. It is absorbed by the Port of Oakland except when space is rented in Terminal Building "C", and then the transfer is for the account of the owner of the cargo.

Q. In other words, what you are doing there is placing the cargo from one facility to another for your own operating convenience?

A. That's right. If we know it is going to stay a very long time, then we might move it.

Q. And I assume that the reason that you have to move it is because you need the space on your regular wharf for the handling of transit cargo?

A. That's right. That's very rarely, however, as I stated.

Mr. Townsend: That is all I have.

Redirect examination.

By Mr. Scoll:

Q. Mr. McCarl, you mentioned moving cargo from one transit shed to another in the same terminal facility. Doesn't it often happen that you have to move cargo from Transit

Shed No. 1 of Outer Harbor or to Transit Shed No. 2, or vice versa, in order to load outbound cargo?

A. Sometimes, in the case of pineapple where it comes in by ocean-going vessels and delivered to ocean-going vessels that transfer is sometimes required, where we get double [fol. 1474] revenues, one from the incoming vessel and one from the outgoing vessel, to take care of that. The stevedores, however, will truck quite long distances without complaint.

Q. The stevedores do not truck from one end of Transit Shed No. 2 in Outer Harbor to Transit Shed No. 1, do they?

A. They do sometimes, yes.

Q. That is a distance of almost 2000 feet?

A. That's right.

Q. Do they truck that distance very often?

A. We usually try to berth the vessel where they won't have much trucking. We have quite a lot of berthing space.

Q. Don't you have to pay for that transfer?

A. Not very often, no.

Q. Is it done by your employees?

A. As I say, we are usually able to berth the vessels so as to eliminate that long transfer. Sometimes the stevedores will do it. We have had occasions where we have moved some.

Mr. Scoll: That is all.

Recross examination.

By Mr. Geary:

Q. Mr. McCarl, to what extent does the Port of Oakland engage in the operation of high-piling?

A. Very limited extent.

Q. At any time?

A. I don't recall—I don't believe I can recall a single [fol. 1475] instance at Grove Street Terminal, Market Street Terminal, where we have high-piled. In the case of pineapple at the Outer Harbor Terminals we high-pile.

Q. On the terminal or in Terminal Building "C"?

A. In both.

Q. Was the owner or the consignee of this pineapple the same organization or were they different organizations where it was part on Outer Harbor and part in Terminal Building "C"?

A. The same owners would be involved in both facilities.

Q. Would it be because of the fact that Terminal Building "C" was filled that it was necessary to leave it on Outer Harbor Terminal?

A. Not necessarily, no. It might be cheaper to high-pile if we have sufficient space in the transit shed rather than transfer to Terminal Building "C".

Q. You say it might be cheaper to high-pile?

A. Yes.

Q. And yet, notwithstanding that fact, you do make the transfer from the Outer Harbor to Terminal Building "C"?

A. Usually when it is—the only time that transfer is effected is when if is requested by the consignee, and then the goods are going to remain in storage for a long period.

Q. And that is based upon the fact that what he has done is to lease Terminal Building "C" or a part of Terminal [fol. 1476] Building "C" to take care of his particular cargo?

A. At times.

Q. What happens at other times?

A. At other times it is on the daily rate and the transfer is for our own account.

Q. And by that you mean that you will transfer the cargo from the Outer Harbor Terminal to Terminal Building "C" at your expense and merely charge the owner of that cargo a cent and a quarter a ton per day?

A. That's correct; long time storage.

Q. And when you move that cargo into Terminal Building "C" under those circumstances do you engage in high-piling.

A. Yes.

Q. You do under those circumstances?

A. Yes.

Q. Normally, what is the extent to which you engage in high-piling? Twice or three times the normal height?

A. If we high-pile, between two and three.

Mr. Scoll: You mean sometimes two tiers and sometimes three tiers?

The Witness: Yes.

By Mr. Geary:

Q. The normal height being seven cases?

A. For different——

Q. (Interrupting) I mean for pineapple.

[fol. 1477] A. Normally seven.

Q. You recognize, do you not, that a part of your terminal operation consists not only in moving cargo in and out of the facility to and from vessels, but it likewise carries with it an obligation to be performed on behalf of the consignees of that cargo or the shippers of that cargo in utilizing your facility to hold the cargo for a period, do you not?

Mr. Scoll: Will you repeat the question?

(The question referred to was read by the reporter.)

Mr. Jones: What answer do you want, Mr. Geary?

Mr. Geary: There is only one: "Yes" or "No."

A. I believe I understand your question. I would say that the service that we perform for the steamship companies includes receiving the cargo that is going out by water movement, receiving the cargo from trucks and cars and delivering it to the vessels; and on the other direction movement, receiving it from the vessels and delivering it to shippers and consignees. The expense of performing those services is included in the transit movement, I would say.

By Mr. Geary:

Q. Suppose the shipper or the consignee would say, "I want you to hold the cargo for a while," would you refuse to take the cargo?

A. Not if we have room.

[fol. 1478] Q. Have you ever had a situation where you haven't had room on your dock in the face of a situation of that character?

A. Unfortunately for the Port of Oakland, no.

Q. In other words, you have always had room on your dock for that?

A. I don't recall having turned any cargo away yet.

Q. So you have never refused to give to a shipper or consignee that service?

A. Not that I can recall, no.

Q. And if you perform that service for that shipper do you think that you ought to be paid for it or do you think that you ought to do it for nothing?

A. Well, under our policy I think that the shipper should pay something for the utilization of the space beyond the free time period.

Q. You think he ought to pay what it cost you at least?

A. I think that would depend on whether we might be in the pioneering stage, whether our facilities are utilized to a reasonable capacity. Circumstances and conditions would have to be taken into consideration.

Mr. Scoll: Again, Mr. Examiner, I don't want to make a nuisance of myself, but Mr. McCarl has expressed himself on that point several times already.

Examiner Basham: Sustained. I think we have gone [for. 1479] into that, Mr. Geary, very thoroughly.

Mr. Geary: I will submit, Mr. Examiner, to your ruling. But I don't think that I had an answer to the last question that I addressed to the witness, Mr. Examiner. Frankly, I don't.

Would you mind reading the question, Mr. Reporter?

Examiner Basham: I understand that there was an objection to it and I sustained it.

Mr. Geary: No, not to the last question.

(The question referred to was read by the reporter.)

Mr. Geary: I think that calls for a categorical answer: "Yes" or "No."

The Witness: Yell, I couldn't very well say "Yes" without qualifying it.

By Mr. Geary:

Q. And your qualification would be based upon the answer that you just gave, as to whether or not you were in the pioneering stage?

A. A number of circumstances would have to be taken into consideration, because very naturally if you are handling only a small amount of tonnage you would have to take that into consideration in determining the cost of handling it.

Q. Mr. McCarl, if a shipper were to offer you 5,000 tons of cargo and say to you "I anticipate that you are going to be required to store 50 tons of that cargo for two years," [fol. 1480] would you refuse to accept that shipment?

A. Not if we had room for it.

Mr. Jones: Mr. Examiner, objection. I object to that question and any other question along this particular line upon the ground that it is improper cross examination. It goes away beyond anything that was brought out in chief by Mr. Scoll, which was limited practically to a description of the physical facilities of the Port of Oakland. Now we are getting into an operating territory which was not taken up by Mr. Scoll and, consequently, is beyond the scope of cross-examination.

Mr. Geary: There were certain questions, Mr. Examiner, if I may be heard on that, that were addressed to this witness by some of the other terminal operators, and I think that my interrogation of them has a direct bearing upon the issues that were brought out.

Mr. Scoll: I would like to add to what I have said before: That the point which Mr. Geary wants brought out is already in the record at pages 880 to 897.

Mr. Geary: That is all.

Examiner Basham: I sustain the objection.

Mr. Geary: That is all.

By Mr. Graham:

Q. Mr. McCarl, in this total of $1,170,701 tons, does that include any tonnage that moves, let us say, inter-port be- [fol. 1481] tween your respective facilities within your jurisdiction?

A. No. We don't transfer any cargo between our own facilities.

Q. So that this total tonnage which you have given us is tonnage which moves into your facility or out of the facility?

A. That's correct.

Q. But doesn't include anything within the facility if you do transport it?

A. That's correct.

Q. May I just ask one question in connection with this Terminal Building "C"? I think you may have answered this on your previous examination at the prior hearing, I do not know. It is a fact, is it not, that you have cargo in that Terminal Building "C" both on the daily demurrage rate, we will call it, and on the monthly storage rate both at the same time?

A. We have had in the past.

Mr. Graham: That is all.

Examiner Basham: Excused.

(Witness excused.)

Mr. Scoll: Mr. Ricketts.

R. NEIL RICKETTS was thereupon called as a witness for the Commission and, having been first duly sworn, testified as follows:

[fol. 1482] Direct examination.

By Mr. Scoll:

Q. Will you give the reporter your full name and occupation, Mr. Ricketts?

A. R. Neil Ricketts; Chief Port Accountant.

Q. You are accountant for the Port of Oakland, are you not?

A. Yes.

Q. And you are familiar with the method of keeing the accounts and the general information that is set forth in them?

A. Yes, sir.

Q. Did you prepare or have prepared under your direction at the request of the Maritime Commission an analysis of income and expense for the Port of Oakland for the fiscal year 1939-40, which is embodied in Exhibit 126?

A. Well, that's my annual report to the Board itself.

Q. So that this report was not prepared especially for this hearing?

A. No, it was not.

Q. Did you, at the request of Mr. Carlon, prepare a number of supporting schedules to show the detail on certain accounts that are set forth on Exhibit 126? I show you Exhibit 126-A, "Port of Oakland Expense, Fiscal Year 1939-1940." Have you a copy of that in front of you?

A. I have a copy of that. That just covers the operation [fol. 1483] of the terminals as indicated there. It does not take in the entire Port.

Q. Will you explain just how the break-downs in Exhibit 126-A apply to the schedules in 126? Have you a copy of 126 before you?

A. No, I haven't.

Q. There is your annual report (indicating).

The Witness: Will you repeat that question again? I don't know that I have it.

Mr. Scoll: The reporter will read it.

(The question referred to was read by the reporter.)

By Mr. Scoll:

Q. In other words, what do the break-downs in Exhibit 126-A apply to?

A. Oh, I see what you mean. In this condensed report that you have here——

Q. (Interrupting) That is Exhibit 126?

A. That's 126. On Schedule No. 3 the expenses there are shown only under the general headings, "Personal Service", "Supplies & Materials", etc.; whereas on this other exhibit the detail of those general headings is indicated.

Q. So that Exhibit 126-A is a detailed break-down of the first item in the account under "Direct Expenses" on Schedule 3, namely, "Personal Services;" is that correct?

A. That's right.

[fol. 1484] Q. And the second heading on Exhibit 126-A is "Supplies & Materials", and that is a break-down of "Supplies & Materials" on Schedule No. 3; is that correct?

A. That is correct.

Q. And so on through the list on Schedule No. 3?

A. For direct expenses only.

Q. That is including all the items under "Direct Expense" from "Personal Service" down through "Maintenance"?

A. That's right.

Q. For the three terminals listed: Outer Harbor, Grove Street, 9th Avenue; is that right?

A. That's right.

Q. Will you take the exhibit which has been introduced as 126-B entitled "Construction Cost of Structures"? What is that a break-down of in Exhibit 126?

A. That doesn't appear in 126.

Q. That is a supplemental exhibit, is it?

A. Yes. That was made up at the specific request of Mr. Carlon.

Q. Will you explain for the record just what is shown on 126-B in relation to your annual report, Exhibit 126?

A. The last page of that annual report. It has no schedule number.

Q. And on that last page appears an account entitled "Fixed Assets", is that correct?

[fol. 1485] A. That's right.

Q. Which includes buildings, structures, land and so forth?

A. Yes, sir.

Q. And what you have done in Exhibit 126-B is to furnish the detail of that item in your annual report, is that correct?

A. On certain of the facilities only, not all of them.

Q. That is right. Outer Harbor, Terminal Building "C", 7th Street, 9th Avenue and Grove Street?

A. That's right. And Terminal Building "C".

Q. Are the third and fourth pages of Exhibit 126-B the maintenance expense which is applicable to those structures detailed on pages 1 and 2, is that correct? Namely, maintenance expenses for the fiscal year 1939-40?

A. That's right.

Q. Will you state whether or not the land costs are included in the statements on Exhibit 126-B, your construction cost? Land cost or land value.

A. On the last page all land values are included.

Q. Will you furnish for the record, Mr. Ricketts, a statement or schedule showing the land values per square foot as of June 30, 1940 assignable to the shed areas, the transit shed areas of each of the facilities of the Port of Oakland to which the data in Exhibit 126-B applies? That can be [fol. 1486] furnished after the hearing is closed. Will you furnish it?

A. I presume we can. That would be a matter for the Engineering Department to determine that.

Q. You keep records, do you not, as to the land values?

A. Yes, the total.

Mr. Townsend: Mr. Scoll, just a question to clear up your request there. You refer to the land values with respect to land occupied by the transit shed, do you? That also includes the portions adjacent to the transit shed which are occupied by tracks and apron and so on, everything that is connected with the transit shed; or just the specific shed area?

Mr. Scoll: In making up these cost studies you and the other terminals have used the land values applicable to the

transit sheds because those were the spaces in which wharf storage and wharf demurrage is incurred. Now, I want to follow the same procedure here, and I think if we have the land values for just those areas that are covered by transit sheds in which there is wharf storage and wharf demurrage, we will have all that we need.

Mr. Townsend: The reason I raise that question, we did go beyond this transit shed area with respect to land values and it wouldn't be comparable with our figures. But it is up to you to get whatever you want.

[fol. 1487] Mr. Scoll: I don't want to confuse this issue right here now with a consideration of other land values. I am trying to apply the same data here that were used in the Edwards formula. So I think for the purpose of applying the Edwards formula, so far as it can be applied to the Oakland operation, if we have the land values applicable to the transit shed areas we will have all we need.

Mr. Townsend: That is all right. I just wanted to clear up a point to make sure you knew what you were getting.

Mr. Jones: Do you want the appraised value or do you want the cost to us?

Mr. Scoll: We will take whatever you carry on your books.

Mr. Jones: The point being that these lands were for the most part given to the City by the State of California, and the only cost has been the cost of the fill-in.

Mr. Scoll: How do you carry it on your books?

Mr. Jones: I am not sure.

Mr. Scoll: Well, that will be the proper figure to use, I believe.

Mr. Graham: May I suggest, Mr. Scoll, that Shed C be included in that also in view of Mr. McCarl's testimony?

Mr. Scoll: Yes, I meant to suggest that.

Mr. Graham: And that we be furnished with a state-
[fol. 1488] ment at the same time of what the total square footage is. I don't know whether that is in the record or not.

Mr. Scoll: That square footage is in the record.

Mr. Geary: It is in the record already.

Mr. Graham: Thank you.

By Mr. Scoll:

Q. Just how is the value of these lands stated on your books? Is it as appraised value or as cost?

A. Part of it is cost and part of it is appraised value, but the Engineering Department set up those figures for me a few months ago in order to bring the set-up in line with the City Hall figures.

Q. You recently have had some appraisals made, have you not, for some of those areas?

A. A few months past.

Q. Well, you don't know, then, whether the appraisals applied to the lands other than transit sheds or not?

A. No, I wouldn't want to say right at this moment.

Q. Suppose you in your schedule, or however you prepare the information that is supplied for the record, indicate the land values that were assigned to the shed areas and explain how they were arrived? Mr. Ricketts, will you turn to the last page of Exhibit 126, the Harbor Maintenance & Improvement Fund Balance Sheet? The item $5,148,372.82 appears in the total of the first column under [fol. 1489] "Assets." Do you find that?

A. Yes.

Q. That represents, does it, the amount or the value of the assets acquired through the Harbor Maintenance & Improvement Fund, as stated?

A. Yes, that's right.

Q. The Port of Oakland has assets in addition to this amount, does it not, which would represent the assets acquired through the application of the funds raised from the bond issue?

A. Yes.

Q. And which would bring the total to how much?

A. You are speaking now of the entire Port area?

Q. That's right. The value of all the assets.

A. $14,000,000 in round figures.

Q. In accounting for depreciation, Mr. Ricketts, what method do you use? Do you use the straight line or the sinking fund method?

A. I am sorry to say that that figure is not made up in my office. It is made by the Engineering Department.

Q. So you don't know what method they use?

A. I do not know what method they use.

Q. Do you know what percentages are used on the shed facilities?

A. No, because they vary depending on the construction.

[fol. 1490] Q. Will you furnish for the record, Mr. Rick-

etts, the percentages used in computing depreciation in Exhibit 126 applicable to the areas we have been discussing; that is, Outer Harbor, Grove Street, 9th Avenue, Terminal Building "C"? That is, the improvements that are set forth on Exhibits 119, 120, 121 and 122? Will you furnish that for the record?

A. Yes.

Q. And in the statement that you furnish will you also state the method that is used in determining the depreciation rates?

A. Yes.

Q. It won't be necessary for you to furnish it right now. If it is inconvenient for you, you can furnish it after the close of the hearing.

A. Yes.

Q. And in preparing that statement will you relate the depreciation figures which you show to the items that are contained in Exhibit 126-B? Do you happen to know what interest rate applies to the bonds that are issued in connection with the acquisition of the Port facilities?

A. Those are various also.

Q. They vary?

A. They vary also.

Q. Do you know what the rates are?

[fol. 1491] A. They run as low as 2½, I believe up to——

Q. (Interrupting) Speak a little louder.

A. They run as low as 2½, I believe, and up to 5 or somewhere around there. You see, those bonds are not handled in the Port offices at all and I don't attempt to keep up with the rates of interest involved in the bonds.

Q. Well, then will you secure for the record a statement showing the amounts of bonds that have been issued at various times together with the percent of interest which is paid on them?

A. Yes, I can.

Q. Will you do that? That should be very simple. It is just a statement of the bond issues and the interest rates.

Mr. Jones: You want merely those issues which went into these particular facilities?

Mr. Scoll: Yes, that is right; which went into the facilities which we are discussing.

By Mr. Scoll:

Q. Does the Port of Oakland make or has the Port of Oakland made any studies to develop the cost of furnishing wharf storage using the formula of Dr. Edwards?

A. No, sir.

[fol. 1492] Q. Have you made any studies to develop those costs using any other basis?

A. No, sir.

Q. Are the accounting records of the Port of Oakland kept in such a manner that the cost of furnishing wharf storage, including both direct and overhead assignable to wharf storage, can be allocated without any further study?

A. No, they are not.

Q. Have you made any studies to determine the number of square feet occupied per ton of commodities that are stored on the terminal facilities in the transit sheds?

The Witness: State that again.

(The question referred to was read by the reporter.)

Mr. Scoll: I mean density studies.

A. Not to my knowledge.

By Mr. Scoll:

Q. Mr. Ricketts, have you made any studies to determine the average amount of floor space area in the transit sheds occupied by storage cargo during the course of a year?

A. I have not, no.

Q. Could you make such a study? Have you any data from which your could—What was your answer to my question when I said "Could you make such a study"?

A. I don't have an answer.

Q. You don't have an answer. Let me ask you another [fol. 1493] question: Are your records kept in such a way that you can determine the average amount of space occupied by storage cargo in each of the facilities that we have been considering?

A. There might possibly be records on the terminals that would give somewhat of an idea of that.

Q. Well, could you prepare for us some such estimate, if you haven't the accurate figures, and let us have that for the record some time after the close of the hearing?

A. Yes, I presume we could.

Q. My request, to repeat in order to make sure it is clear on the record, is the average amount of space in each of the transit sheds occupied by stored cargo during the course of the year, basing that on the fiscal year which is used in Exhibit 126.

Mr. Jones: That is going to entail a great amount of work, Mr. Scoll.

Mr. Scoll: Well, we can come——

Mr. Jones: (Interrupting) An estimate is not going to be of any value.

Mr. Scoll: If you can arrive at some figure and you could give us that amount of space. We have it for all the other terminals in one form or another and we would like to have it for the Port of Oakland too.

By Mr. Scoll:

[fol. 1494] Q. Do you happen to know what the tax rate is per hundred dollars on land adjacent to the waterfront in your neighborhood?

A. No, I do not.

Q. Do you happen to know what the rate is on nearby industrial land?

A. I don't know that, either.

Q. Or on improvements?

A. No, sir.

Mr. Scoll: Thank you, Mr. Ricketts.

Cross-examination.

By Mr. Geary:

Q. There are no taxes included in your Exhibit 126 as an item of expense?

A. For the reason as before stated, because of the bonds.

Q. In other words, there is no tax assessed against any of the improvements or any of the lands which the Oakland Harbor Commission owns?

A. No, sir.

Q. Neither City nor County taxes?

A. No, sir.

Q. You do not likewise include in your item of expense an item such as the Social Security payments?

A. No.

[fol. 1495] Q. You are not subject to that?

A. Not subject to that.

Q. Will you refer for a moment, Mr. Ricketts, to Exhibit 126-B? You refer there to what is known as the 7th Street Unit. What is that unit with relation to the units that are referred to in Exhibit 126?

A. We do have a reference to it in this other exhibit.

Q. You do have a reference to 7th Street Unit in Exhibit 126?

A. Here it is (indicating).

Q. Are the figures in Schedule No. 2 of Exhibit 126 incorporated into Schedule No. 1 of that exhibit?

A. Yes.

Q. Where is the 7th Street?

A. Outer Harbor.

Q. I see. Taking 126-B, you have a total construction cost there of buildings totaling some five million, three hundred thousand-odd dollars and in the last page of Exhibit 126 you have a figure there for building structures and improvements of some two million, seven hundred thousand-odd dollars. What is the explanation of the difference between those two in so far as they relate to the terminal properties?

A. The first exhibit you mentioned covers the entire investments, both bond and revenue fund. The second exhibit is investment from revenue funds only.

[fol. 1496] Q. I wonder if you would mind elaborating on that because, frankly, I will admit that I am a bit dense on it and I don't know just exactly what the purpose is.

A. The bond issues when authorized are spent for improvements only, improvements and betterments. Our income account, which is the revenue fund, can be spent for any purpose.

Q. In other words, you mean out of the bonds you have spent five million, three hundred thousand-odd dollars; and out of the revenues you spent another two million, seven hundred thousand-odd dollars?

A. No. You can't say that we spent two million.

Q. You may have spent more than that?

A. Because this figure set up in here is the final value that has been fixed in that recent survey when we came to agreement in Harry Williams' office and raised certain values that had heretofore not been set up on our books. But this doesn't necessarily represent the total amount

shown on that balance sheet which was actual money we accrued and expended for this purpose.

Q. In fact, what it might represent, might it not, Mr. Ricketts, is a value which is more than $2,700,000 but merely making an allowance for depreciation over a period of years and then making an adjustment in order to correct your books to the books of the County Auditor or County Tax Collector?

[fol. 1497] A. City Auditor.

Q. City Auditor. Isn't that true?

A. The question is a little ambiguous. I didn't quite get it.

Q. Let me see if I can clear up what I particularly have in mind. Take that figure of $2,763,707.65. Before that figure was corrected, when you were carrying your own books entirely without regard to what the City Auditor had on his books, do you know what that figure was?

A. Not off-hand. I couldn't state, no.

Q. Was it higher or lower?

A. It was less than that.

Q. It was less than that?

A. Yes.

Q. But by how much you don't know?

A. No, I would hesitate to state.

Q. By the way, you don't pay any Federal income tax on that either, do you?

A. No, sir.

Q. Nor a franchise tax to the State of California?

A. No, sir.

Mr. Geary: That is all.

By Mr. Graham:

Q. You don't pay any taxes at all, do you, for the operation of those facilities?

[fol. 1498] A. Not in the strict sense of taxes, no.

Mr. Graham: No taxes.

Mr. Jones: Sales tax.

By Mr. Graham:

Q. May I ask you one question on this depreciation? That is back on Schedule No. 1 on Exhibit 126. Under "Expenses" there you have two figures for depreciation on

buildings, structures and improvements, one figure in brackets of $270,652.85, and the next figure is $286,034.71.

A. There is another figure immediately above the first one you mentioned there, which is the equipment depreciation.

Q. And the $286,034.71 is the combination of the two?

A. Yes.

Q. That is what I thought. The next question is, "Does that depreciation take into consideration all of the facilities whether they have been constructed out of bond issues or out of operating revenue?"

A. That's right.

Q. And you don't have any concern at all yourself in this report with the question of amortization on bond issues?

A. We don't differentiate, no, between the depreciation on bond investment and the depreciation on the other investment.

Mr. Graham: That is right.

[fol. 1499] Mr. Geary: I have one question, if I may.

By Mr. Geary:

Q. With respect to Schedule No. 1 of Exhibit 126, are the depreciation figures on the buildings that are in that exhibit figures that you yourself calculated or those figures that were given to you by the engineer?

A. We calculated them. The basis was worked up by the Engineering Department. They rated the depreciation and term of life.

Q. You can't tell now by looking at this Exhibit where on Schedule No. 1 with relation to the Grove Street Terminal there is depreciation on buildings of some $38,000, the basis under which that depreciation was calculated?

A. No, I couldn't.

Q. But you have that material in your office?

A. We have it on the work sheet there in the office.

Q. On a work sheet that you derived that figure from in compliance with the instructions of the Engineer?

A. That's right.

Mr. Scoll: May I ask one more question on depreciation before you go on to something else?

Mr. Ricketts, in connection with my request for statements showing the rate of depreciation and the period of

useful life, which you are going to furnish for the record, will you have that statement show the depreciation data [fol. 1500] which I have asked for broken down to show the rates and useful life on sub-structures below the transit area and floors separately and the sheds themselves?

The Witness: Yes.

Mr. Scoll: That is all.

By Mr. Townsend:

Q. Mr. Ricketts, I have a few questions. Will you turn to Schedule No. 2 of your Exhibit No. 126, please? Four or five lines above the word "Airport" there is an item called "Rentals of trackage, $6,703.20." Just what does that represent?

A. That is a maintenance agreement with the Southern Pacific and the Oakland Terminal Railroad Company by which they pay us rental for the use of those tracks at Outer Harbor Terminal for the purpose of maintenance.

Q. And that is only at the Outer Harbor?

A. That is all.

Q. Who maintains those tracks?

A. We do.

Q. You maintain them and you likewise maintain the tracks at the Grove Street Terminal?

A. Yes, sir.

Q. But at the Grove Street Terminal you get no rental from the railroads? You simply allow them to use it without any compensation?

[fol. 1501] A. Up to this time we have, yes.

Q. But at the Outer Harbor the railroads pay you for the privilege of serving the Outer Harbor?

A. Yes.

Mr. Jones: Could I qualify that, Mr. Townsend?

Mr. Townsend: Yes.

Mr. Jones: That rental from the Southern Pacific and the Oakland Terminal Railroad does not cover the tracks on the wharf itself but only those in the back which serve that industrial area at the Outer Harbor Terminal, and it is figured on 5 per cent of the original cost.

By Mr. Townsend:

Q. Will you refer now to your Exhibit 126-A? Where, in that exhibit, do you include the expense of checking cargo to and from freight cars?

A. Personal Service.

Q. Well, I see 26 items of personal service. Which one?

A. As far as I know it is under No. 9.

Q. "Receiving and delivering." Are you sure of that?

A. I wouldn't say that it is all in there, no.

Q. How much is in there for checking cargo to and from freight cars, do you know?

A. No, I wouldn't be able to tell you.

Q. Do you know whether any of that checking expense is [fol. 1502] in other of those items?

A. This distribution is made entirely at the terminal and forwarded to me on the payroll, so that my office is not entirely familiar with just how that distribution is arrived at. That's the principal reason why I can't answer your question directly.

Q. Will you turn, please, again to Schedule No. 2 of your Exhibit No. 126? Where in that schedule do you include the revenue that you receive for the checking of freight to and from freight cars?

Mr. Jones: Mr. Examiner, I fail to see the relevancy of the checking of cargo to and from freight cars on a question of wharf storage. For that reason I object to the question.

Mr. Townsend: It is in the Edwards formula. That is why I feel it is necessary to go into it. There is a specific item on that. I think it is certainly pertinent.

Examiner Basham: The objection is overruled.

The Witness: May I have the question again?

Mr. Scull: By the way, just to clarify the record before he answers that, where, in the Edwards formula, is that referred to, Mr. Townsend?

Mr. Townsend: It is on Schedule B, lines 20 to 26. It is all in there.

Mr. Scull: Schedule B?

[fol. 1503] Mr. Townsend: Schedule B, sheet 1 of five sheets. Here is an item specifically "Checking account car loading", and there is a place to fill in under "Wharf demurrage"; "Checking account car unloading", a space to fill in under "Wharf demurrage."

Mr. Scull: The only one that I find in there that applies to wharf demurrage is checking to and from demurrage.

Mr. Graham: That is all I find, too.

Mr. Townsend: Well, the copy we have has some blank spaces and no "Xs" in Column II under "Wharf Demurrage," "Checking account carloading" and "Checking account car unloading."

Mr. Scoll: O. K. Let it go.

Mr. Townsend: May we have an answer to the question?

(The question referred to was read by the reporter.)

A. There, again, in the Port the billing is made at the various terminals where the movement of cargo originates, and just which items include the checking to which you refer I wouldn't be in a position to state, either, from this exhibit. There is one item definitely there of checking on Schedule No. 2. Whether that is checking in and out of cars in its entirety I wouldn't know without going into the terminal records. It is, though, I am quite sure.

By Mr. Townsend:

[fol. 1504] Q. Well, you just don't know whether it is or not, I gather?

A. Not definitely, no.

Q. Who pays that revenue to the Port of Oakland in connection with checking to and from freight cars?

The Witness: I couldn't hear that at all.

Mr. Townsend: Will you read that question, please?

(The question referred to was read by the reporter.)

A. The various patrons of the facilities.

By Mr. Townsend:

Q. Now, do you know who pays them? Don't you know for a fact that the railroads pay that to the Port of Oakland, at least in many instances?

A. Not necessarily. I don't know that, no.

Q. Well, do you handle the——

A. (Interrupting) I do, but I don't pay any attention to definitely which particular items the railroad company pays and which they don't.

Mr. Townsend: I would like to request that the Port of Oakland produce a statement showing the amount of revenue received from the checking of freight to and from freight cars, and information as to where that revenue is

contained in Schedule 2 of Exhibit No. 126. Also I would like to request information as to the amount of the expense in connection with the checking of freight to and from [fol. 1505] freight cars and where that is included in Exhibit 126-A.

Mr. Jones: Mr. Examiner, we would like to help our friends from the Port of Stockton in their private altercation with the railroad company, but I don't think we should allow this proceeding to be made a fishing expedition to gather that evidence for their use. For that reason I think the request is unwarranted. It does not bear upon any issue in this proceeding.

Mr. Scoll: If I may have my 25 cents worth, I don't think it is covered by the order of notice: That we would take evidence on the cost of wharf demurrage or storage.

Mr. Townsend: Mr. Examiner, I just want to point out that it is pertinent because the Edwards formula requires that you show in this formula that has been submitted to the terminals to fill out the amount of the checking expense to and from the cars in connection with carloading and car unloading, and it says that that is attributable to wharf demurrage. It also asks that you show the wharf demurrage revenue. And I am certainly entitled to argue, if I want to argue it, that some of the revenue that is received by the terminals from the freight to and from the cars and is received from the railroad companies is attributable to wharf demurrage revenue.

Mr. Jones: If Mr. Townsend wants that information [fol. 1506] in the record he can develop it from his own facilities, and if there is nothing to contradict it, of course, he is perfectly capable of arguing that point in a brief. But I don't see why the Port of Oakland should be put to the expense—after all, we have enough information to furnish to the Commission now—of preparing such statements.

Mr. Geary: Is it not also true that Dr. Edwards' report indicated that that particular item should be considered as chargeable to wharf demurrage when the cargo stays on the dock over the free time period?

Mr. Scoll: Now,——

Examiner Basham: (Interrupting) I have heard enough. I don't think it would be material to this issue, so I will not ask the witness to furnish it.

By Mr. Townsend:

Q. Will you refer again to Schedule No. 2 of your Exhibit No. 126, please? You show near the bottom of the list under "Operating Facilities" some revenue for transferring and piling, and you also show a corresponding expense item in Exhibit 126-A. Will you please explain what is meant by those items? Transferring them where? What does it mean?

A. I presume that it is transferring cargo on the docks. But there, again, it originates at the terminal.

Q. What do you mean "It originates at the terminal?"

A. The revenue charge and the expense charge, both.

[fol. 1507] Q. Can't you tell us something about that item?

A. I cannot.

Q. Well, so far as you know, the services covered by the revenue item and the expense item are the same, which would indicate that you received $9,382.65 in revenue and your expense is some $19,608.00? Is that a fair conclusion?

Mr. Jones: If you know.

A. That the expense is comparable to the revenue? Is that what you mean?

By Mr. Townsend:

Q. That the services covered by those two items are the same and that you are receiving about a little less than half of what it costs you for performing those same services?

A. I presume it is, yes.

Mr. Townsend: That is all I have. Thank you.

Examiner Basham: You are excused, Mr. Ricketts.

(Witness excused.)

Examiner Basham: We will have a short recess.

(A short recess was taken.)

Mr. Scoll: Mr. Smith.

CARL M. SMITH was thereupon called as a witness for the Commission and, having been first duly sworn, testified as follows:

Direct examination.

[fol. 1508] By Mr. Scoll:

Q. Will you tell the reporter your name, Mr. Smith?

A. Carl M. Smith; Assistant Secretary and Accounting Officer, Board of State Harbor Commissioners.

Q. Mr. Smith, I show you Exhibit 135, which was introduced this morning. Do you have a copy of that before you?

A. I have some supplements to that that were to be furnished to you this afternoon.

Q. Before we go to the supplements will you take a look at Exhibit 135? Was that prepared by you or under your direction?

A. It was.

Q. And it is an analysis of the expense and revenues of the Board of Harbor Commissioners with particular reference to wharf storage and wharf demurrage, is it not?

A. Yes. There is an exhibit in there pertaining to wharf demurrage and storage contained in there.

Q. That exhibit was prepared in cooperation with Mr. Carlon of the Maritime Commission?

A. It was.

Q. And at our request?

A. Correct.

Q. You prepared some supplements to that exhibit, did you?

A. Yes. Those supplements are the analysis of the [fol. 1509] demurrage at Facility No. 56, and the diagrams of all facilities, both 56 and 45.

Q. The first of these supplements which you have prepared, which I now show you, is entitled "Statement of Commodities and Square Foot Area Occupied, Terminal Demurrage, Pier 56." That corresponds, does it, to the last page of Exhibit 135?

A. It does.

Q. And the last page of Exhibit 135 furnishes the information for Pier 45 and the exhibit which you have just described furnishes it for Pier 56, is that correct?

A. Yes, that's correct, remembering that 56 is three exhibits—there are three exhibits with 56: The main building, the annex first floor and the annex second floor.

Mr. Scoll: I offer the statement of Commodities and Square Foot Area Occupied, Terminal Demurrage, Pier 56, Main Building, as 135-A.

Examiner Basham: Received.

(The statement referred to was marked "Commission's Exhibit 135-A", and received in evidence.)

Mr. Scoll: I offer as the next exhibit a similar statement for the first floor annex at Pier 56 as Exhibit 135-B.

Examiner Basham: It will be received.

(The statement referred to was marked "Commission's [fol. 1510] Exhibit 135-B", and received in evidence.)

Mr. Scoll: And the third sheet entitled "Second Floor Annex," the same description as the others, I offer as 135-C.

Examiner Basham: It will be received.

(The statement referred to was marked "Commission's Exhibit 135-C", and received in evidence.)

By Mr. Scoll:

Q. Mr. Smith, has the Board of Harbor Commissioners made any studies to develop the unit cost of furnishing wharf demurrage and wharf demurrage services on the basis of the Edwards formula?

A. No.

Q. Have you made any studies on any other basis?

A. No.

Q. Are the accounting records of the Board of State Harbor Commissioners kept in such a way that such unit costs would be readily ascertainable?

A. No, sir.

Q. What method do you use in determining the depreciation? Sinking fund or straight line?

A. It is the straight line method. Might I explain that we don't write off depreciation against our income currently. Such depreciation as appears on our balance sheet, which is one of the exhibits here, is a depreciation figure [fol. 1511] that was established as of July the 1st, 1929, determined by study made by the State Department of

Finance in conjunction with the Harbor Engineering Department, and it is on the basis of cost of reproduction less accrued depreciation as of that date.

Q. Have you indicated in Exhibit 135——

A. (Interrupting) My exhibits are not numbered. My pages are not numbered.

Q. Have you indicated in the series of schedules which you prepared, which have been introduced as Exhibit 135, what the percentage of depreciation is for each of the shed areas in Piers 56 and 45?

A. No. We did not indicate the depreciation because we took the net book figure as of the present day, which only has depreciation in it to and including July 1, 1929.

Q. So you have not made any charge for depreciation in determining your annual operating expense for those areas?

A. Not since July, 1929.

Q. Let me ask you, Mr. Smith, do you figure depreciation in when you are determining your annual operating expense for these facilities?

A. No, not current depreciation.

Q. Not currently?

A. No. As I said before, our sole depreciation that appears on our balance sheet is a depreciation that was [fol. 1512] determined at the date of a revaluation, which was back in 1929.

Q. But you don't figure depreciation currently?

A. No, sir.

Q. Do you make any deduction which would be equivalent to depreciation?

A. Well, we feel that our—first, that our maintenance, our high degree of maintenance and addition to the amount that we contribute from our revenues to the amortization of the harbor bonds somewhat nearly meets the theoretical depreciation if it were used.

Q. Well, then, would it be fair to state that the figures which you have in those schedules for the items which you have just named would correspond to what your depreciation charge would be?

A. I would say, Yes, especially when taking into consideration that our Engineering Department has informed me very recently that, if we were to make a revaluation on the cost of reproduction less depreciation as of the current date, that due to the higher material costs and higher labor

costs that would be taken in as the governing factor into reproduction cost, that the revalued figures would be very close to what we carry them on the books at the present time.

Q. That is, the valuation figure?

A. The valuation figure.

[fol. 1513] Q. Would the amount which you would charge currently to depreciation then be more than you have indicated in maintenance and amortization requirements? In other words, would your depreciation charge be higher if you were to revalue the properties now?

A. Oh, if you were to revalue the properties at the present time and write off accrued depreciation as of this date and the revalued properties before depreciation were higher than they were back in 1929, the depreciation accrual figure would be larger.

Q. Are there any bonds outstanding issued for the acquisition of properties by the Board of Port Commissioners?

A. Yes, sir.

Q. What interest rate do they carry?

A. Four per cent.

Q. Do you happen to know what the tax rate is per hundred dollar valuation on industrial land adjacent to the waterfront of San Francisco?

A. No, sir.

Mr. Scoll: That is all, Mr. Smith.

Cross-examination.

By Mr. Geary:

Q. What is the amount that is expressed in Exhibit No. 135 which represents the payment which is made by the State Board of Harbor Commissioners towards the amorti-

[fol. 1514] zation of its bonds?

A. The amount shown on the balance sheet as on deposit in the three sinking funds less the accrued interest to date: bond interest accrued of $386,000. So if you would take the $4,006,346.56 shown on the balance sheet, the first page of the balance sheet, and deduct therefrom the $386,060, which was bond interest accrued and payable on July 1st, the net result would be the amount resting in the Harbor Commission's fund for amortization of bonds.

Mr. Graham: That does not represent yearly amortization?

The Witness: No, that is correct.

Mr. Graham: Have you any figure that shows your annual amortization?

The Witness: I have in the office.

Mr. Graham: It is not on this exhibit?

The Witness: It is not on this exhibit.

By Mr. Geary:

Q. Is it a stated figure or is it a figure that varies with the amount of income that represents the annual experience of the State Board of Harbor Commissioners?

A. It is a figure fixed by statute. It is a certain fraction of the number of bonds issued and outstanding.

Q. It would have to be subject to amortization each year?

A. Each year; yes, sir.

[fol. 1515] Q. And, as I understand your reply to Mr. Scoll's question, you feel that that amount plussed by the amount that you spend each year for maintaining your property is the equivalent of what would normally be the depreciation charge that would be put on a book if the organization were run on a private industry basis?

A. That's correct, Mr. Geary.

Q. Were you with the Board of Harbor Commissioners at the time that the rate of 25 cents per ton for five days as a wharf demurrage penalty was fixed?

A. Let me say that in connection with the operating matters along the front, wharf demurrage rates and so forth, I am not qualified to testify.

Mr. Geary: That is all.

Redirect examination.

By Mr. Scoll:

Q. Mr. Smith, will you turn to the statement showing the value of Units 45 and 56 in Exhibit 135 which you have before you?

A. Yes.

Q. Will you look at Unit 45? The figure is written for land $305,257.50. Do you see that figure?

A. Yes, sir.

Q. Do you know what area of land that applies to?

A. 488,380 square feet.

[fol. 1516] Q. 488,380 square feet?

A. Yes, sir.

Q. Just below that is Unit 56, and for the purpose of the record this is the thirteenth page of Exhibit 135, considering Account No. 1 as the first page. In Unit 56 the amount for land is $103,521.25. What area does that apply to?

A. 165,634 square feet.

Q. And Unit 56, annex building filled, $286,248.40. What area does that apply to?

A. 50,114 square feet.

Mr. Scoll: That is all, Mr. Smith. Thank you.

Recross-examination.

By Mr. Graham:

Q. Mr. Smith, could you furnish us the information in response to Mr. Geary's question with respect to the annual amortization of the bonds for this period covered by Exhibit 135?

A. Very easily.

Q. Fine: Does the Board of Harbor Commissioners pay any taxes of any kind to anybody?

A. No, sir.

Q. Neither State nor Federal?

A. Well, with one exception. I don't know yet whether we are under it or not, but the Railroad Retirement on the [fol. 1517] Belt Railroad.

Q. You are paying it just the same?

A. Well, we are withholding from the employees and I don't know whether we are going—My answer to that should be that at the present time we pay no taxes.

Mr. Kilkenny: You make a contribution to the State, if you don't pay taxes, which is equivalent to it?

The Witness: That is just for the employees retirement.

Mr. Kilkenny: Well, if they are not in the Federal retirement you have to make a contribution to the State Employees Retirement Fund, do you not?

The Witness: Oh, yes. We contribute to the State Employees Retirement Fund.

Mr. Kilkenny: Equivalent to the amount of tax?

The Witness: Yes.

Mr. Graham: That is a pension fund. That is no tax.
Mr. Kilkenny: It is comparable to it; the same thing.

By Mr. Graham:

Q. What you do pay to the State is the State Retirement Fund?
A. That is correct.
Q. When I am talking about "Taxes" I am talking about [fols. 1518-1522] taxes that an ordinary private corporation pays. You don't pay any of those taxes, do you?
A. We don't pay any of those taxes; no, sir.

Mr. Graham: That is all.
Examiner Basham: You are excused, Mr. Smith.

(Witness excused.)

Examiner Basham: We will adjourn until ten o'clock tomorrow morning.

(Whereupon, at 4:40 p. m., October 7, 1940, the hearing in the above-entitled matter was adjourned.)

* * * * * * *

[fol. 1523] Proceedings

Examiner Basham: Come to order, please.
Mr. Scoll: Before we call Mr. Gates to the stand, Mr. Examiner, may we recall Mr. Smith for a few figures he was going to have for us this morning?

Carl M. Smith resumed the stand and testified further as follows:

Direct examination.

By Mr. Scoll:

Q. You were asked yesterday, Mr. Smith, for figures of the amount of amortization payments that you made for the fiscal years 1939-1940. Have you got those figures?
A. Yes, sir.
Q. Will you read them into the record?

A. For the fiscal year ended June 30, 1939 $345,939.33; for the fiscal year ended June 30, 1940, $345,939.33.

Q. And those were the amortization and interest payments that were derived from the revenues of the Board of Harbor Commissioners?

A. No. Those were just amortization. That was the actual transfer of cash from the revenue funds of the Harbor into the sinking fund for the redemption of bonds. There is an additional earning of the investments in the sinking fund for each of those two years. For 1939 the [fol. 1524] sinking fund investments earned $104,971.25. For 1940 $120,596.25.

Q. Were those earnings, interest earned on the amortization reserves, available for amortization payments on the bonded indebtedness?

A. Yes, sir.

Q. Does the Board of Harbor Commissioners construct improvements and betterments out of revenues?

A. Yes, sir.

Q. Do you have figures for the same fiscal years, that is, 1939 and '40, for the amounts disbursed out of revenues for betterments and improvements?

A. I have.

Q. What are those figures?

A. For 1939 $237,853.53.

Mr. Geary: Is that the fiscal year or the calendar year?

The Witness: The fiscal year. For 1940 $23,030.14. I might add that over a ten-year period average it would be a great deal more than those figures indicate because we don't always in any particular year do—rather, let me put it this way: Our construction program is not consistent. It is rather irregular.

By Mr. Scoll:

Q. Do you have the average figure?

[fol. 1525] A. I have the average figure for a ten-year period, which is $249,000 a year.

Q. What ten years does that cover?

A. 1931 to 1940.

Q. Mr. Smith, does the financial statement that you prepared for us show the annual accruals for interest on the bonds of the Harbor Commissioners?

A. No. It only shows—well, it would show—yes, it would show in there, but there may be some discounts or some-

thing else in there. The interest wouldn't stand out clearly fixed on the statement.

Q. Do you have that figure readily available for the fiscal years '39 and '40?

A. Yes. It would be 4 per cent on $19,303,000.

Mr. Scoll: Thank you. That is all, Mr. Smith.

Examiner Basham: Any questions? (No response.) You are excused.

(Witness excused.)

Mr. Scoll: Mr. Gates.

MARK H. GATES resumed the stand and testified further, as follows:

Direct examination.

By Mr. Scoll:

[fol. 1526] Q. I hand you, Mr. Gates, a diagram entitled "Pier 45, Board of State Harbor Commissioners, Diagram No. 697." Will you state what that shows?

A. It is a diagram of Pier 45 showing the area and the four sheds.

Q. The four sheds are there lettered "A", "B", "C", and "D". Are the sheds used in whole or in part for wharf demurrage or wharf storage, such as there is on the pier?

A. In part, yes.

Mr. Scoll: I offer that diagram for the record.

Examiner Basham: It will be received as Exhibit 144.

(The diagram referred to was marked "Commission's Exhibit 144", and received in evidence.)

By Mr. Scoll:

Q. I hand you a diagram entitled "Pier 56, Diagram No. 695, Board of State Harbor Commissioners." Will you state what that diagram shows?

A. It is a diagram of Pier 56 giving the square foot area.

Mr. Scoll: I offer that as the next exhibit.

Examiner Basham: Received as No. 145.

(The diagram referred to was marked "Commission's Exhibit 145", and received in evidence.)

By Mr. Scoll:

Q. I show you a diagram entitled "Annex to State Prod-
[fol. 1527] ucts Terminal, Board of State Harbor Commissioners, Diagram No. 696." That is an annex, is it, to Pier 56?

A. That's right.

Q. And will you state briefly what that shows?

A. That shows—it is a diagram of the Annex, Pier 56, showing the floor area, first and second floors.

Q. And the areas indicated on this diagram are used in whole or in part for wharf demurrage and storage?

A. That's right.

Mr. Scoll: I offer that.

Examiner Basham: It will be received as Exhibit No. 146.

(The diagram referred to was marked "Commission's Exhibit No. 146", and received in evidence.)

By Mr. Scoll:

Q. Taking Pier No. 45, Mr. Gates, is that facility built on piles or is it built on ground?

A. Why, a large portion of it is on solid fill.

Q. That would be the back portion of it; that is, the landward side?

A. Yes; and, of course, the piles on the aprons.

Q. Are there piles supporting part of the shed structures?

A. I think—I am not sure of the dimensions of the fill, but a greater part of the structure is on solid fill. I can't give you a description of the particular part.

[fol. 1528] Q. Do you know whether the sub-structure is concrete or of timber?

A. Well, most of it is solid fill.

Q. That is, the portion of it that is on fills?

A. Well, I believe that is creosote piles with a reinforced concrete jacket. However, I am not very familiar with the engineering problem.

Q. What materials would you say are used in the construction of the sheds?

A. In the sheds?

Q. In the sheds.

A. They are reinforced concrete and steel.

Q. And is the same general material used throughout in the construction of Piers 45 and 56 and the Annex to 56?

A. Well, 56 is built entirely on solid fill. It's reinforced concrete.

Q. But what about the Annex to Pier 56?

A. That is reinforced concrete and it is on solid fill.

Q. Are most of the goods that are stored on the facilities we have been describing either discharged by vessels at the terminal or eventually loaded on to vessel at such terminals?

A. That's right.

Q. And are such goods normally transported to or from ports outside of the State of California?

[fol. 1529] A. Yes. I think most of it would come from outside the State of California.

Q. Have you furnished us with information showing the number of tons of cargo handled over Piers 45 and 56?

A. I think that's contained—yes, it is on our Exhibit 135.

Q. Mr. Gates, has the Board of Harbor Commissioners ever made any study to develop the unit costs of furnishing wharf demurrage or wharf storage?

A. No, they have not.

Q. Have you ever made any attempt to apply the Edwards formula to your costs to determine what the unit costs were?

A. No, we have not.

Q. Are your accounts kept in such a manner as the costs assignable to wharf demurrage and wharf storage could be allocated according to the Edwards formula?

A. No, they are not.

Q. Do you happen to know what the tax rate is per hundred on land adjacent to the waterfront? I am speaking of industrial land.

A. No, I don't know the exact figure for this year. It's something over four dollars a hundred.

Q. That is for near-by industrial land in the same neighborhood as the terminals?

A. That is the City and County tax on all real property [fol. 1530] in the City.

Q. All the waterfront land in San Francisco harbor is under the jurisdiction of the Board of Harbor Commissioners, is it not? Are there any private terminals?

A. No.

Q. Privately owned?

A. No. It is all under the jurisdiction of the Board of Harbor Commissioners.

Q. That is, the Board of Harbor Commissioners has title to all of the waterfront?

A. All the waterfront property.

Q. Except what might be held by the United States?

A. That's right; and the City. Some of it has been turned over to the City for Yacht Harbor and the Aquatic Park.

Mr. Scoll: That is all, Mr. Gates.

Cross-examination.

By Mr. Geary:

Q. Mr. Gates, referring to Exhibit 144, the exhibit shows the total area of the four sheds as 488,380 square feet. That is the square footage inside the sheds?

A. No. I think that's the total area of the whole pier.

Q. Do you know what the square footage is of the sheds individually?

A. Roughly about 400,000.

[fol. 1531] Q. 400,000. So that for the sake of a rough illustration we can take it that each one of those sheds contains approximately a hundred thousand square feet?

A. That's right.

Q. Is all of that space used generally on wharf demurrage cargo?

A. No.

Q. What portion of that would you say was generally represented by your experience as being utilized for wharf demurrage cargo?

A. That is shown in our Exhibit 135, I believe.

Q. Is that in Exhibit 135, or is that in Exhibits 135-A, -B, and -C, because I haven't yet got copies of A, B, and C?

A. No, it is in 1935.

Q. Referring to Exhibit 145, that shows the building and the apron to contain 125,828 square feet, and the second floor of the building to contain 83,126 square feet. Refer-

ring to the first floor, is the apron of that facility used for wharf demurrage purposes?

A. No, not the apron.

Q. And is it fair to say that whatever wharf demurrage cargo is utilized or requires utilization of Pier 56 that it would be put inside the building on the first floor?

A. That's right, or in the Annex.

[fol. 1532] Q. And taking the square footage of the building on the second floor would you say that it was a fair statement to state that the first floor of that building likewise contained approximately 83,000 square feet?

A. No. The first floor of the building contains larger area than the second floor.

Q. About what would you say would be the square footage of the first floor?

A. It says roughly, 125,000. Do you mean inside?

Q. Inside, yes.

A. I couldn't give you that figure without measuring it.

Q. Could you make any estimate of what it would be?

A. No, I wouldn't.

Q. You would not?

A. No.

Q. Is that shown on any of the exhibits that have previously been introduced?

A. I think not.

Q. Would it be possible for you to get that information and furnish it for the purposes of the record, so that we can have a clear line of demarcation between the space which is utilized for wharf demurrage purposes and the space which is not used for that purpose?

A. Yes, that can be done.

Q. And is the inside building space of Pier 56 utilized [fol. 1533] for wharf demurrage cargo?

A. Yes, part of it is.

Q. To what extent?

A. That also is shown in Exhibit 135. I might add to that by saying that the second floor is given over entirely to refrigeration.

Mr. Scoll: That is the second floor of 156?

The Witness: 156.

By Mr. Geary:

Q. Of Pier 56?

A. Yes.

Q. With respect to Exhibit 146, is all of that space utilized for wharf demurrage cargo?

A. All or a part of it.

Q. Approximately how much would you say would be utilized?

A. Well, that is also shown—the figures are shown in Exhibit 135.

Mr. Geary: That is all.

By Mr. Graham:

Q. Mr. Gates, in connection with this Exhibit 146 showing the Annex, is that a separate building from the lower floor of the building shown on Exhibit 145?

A. Yes, it is.

Q. And you move cargo that is going in wharf demurrage through from the channel, through the lower floor of the [fol. 1534] sheds on Pier 56 in order to get to this Annex?

A. That's right.

Q. When you go to the second floor of the Annex you can't move through the second floor of the facility at Pier 56?

A. Yes, it could be done.

Q. Well, do you do that? Do you open those?

A. I am not sure. There are two methods of getting there: One is by a ramp that leads to the second floor.

Q. You mean to the second floor on both Pier 56 and the Annex?

A. Yes. There is a ramp that leads to both those floors and cargo can be loaded or discharged to the second floor from a vessel.

Q. Is there a bridge or a ramp running between the second floor of Pier 56 and the second floor of the Annex?

A. That's right.

Q. So that you can reach that Annex either by means of this ramp on the second floor or by means of crossing the tracks on the first floor?

A. That's right.

Q. And that building is directly north of the facilities on Pier 56?

A. Yes, north of that.

Q. Am I correct in understanding that all of the facilities [fol. 1535] in the Annex and the lower floor of the facilities at Pier 56, although not fully utilized at all times for wharf demurrage, are available for that purpose?

A. That's right.

Q. Will you go back to Pier 45, Exhibit 144? Are those four sheds, A, B, C, and D, also available for wharf demurrage although not possibly all used at one time for that purpose?

A. That pier is used a great deal for transit operations.

Q. Yes, I understand that.

A. And only a portion of it has been used for storage.

Q. Which portion of it and which sheds have been used or are available for wharf demurrage?

A. Well, Sheds B and D have been used for wharf demurrage.

Q. What is that?

A. I say, Sheds B and D.

Q. Yes.

A. A very small portion of the outer end of Shed C.

Q. For wharf demurrage?

A. Yes, they have been used.

Q. Is the balance of Shed C available for wharf demurrage if you want to use it for that purpose?

A. Well, it's available, yes. As I say, we have been using those sheds more in transit operations.

Q. How about "A"?

[fol. 1536] A. "A" for transit operations.

Q. If you get ships alongside on the north side of "A" or "C" with cargo that is going under wharf demurrage, how does that get to Sheds "B" or "D"?

A. That can be trucked across.

Q. Those trackage ways between "A" and "B", and "C" and "D" are flush tracks, are they?

A. Yes, they are paved.

Q. So these are not depressed tracks in that way.

A. No.

Q. So that you can go from shipside at Shed "A", let us say, to wharf demurrage space on Shed "D"? That is a possible operation?

A. It can be done, yes. In fact, we have used all four of the sheds for in transit operations nearly at all times.

Q. Yes, I understand that. Mr. Gates, are these facilities available now for that purpose or have they been taken over by the Federal Government for military operations?

A. Well, the Federal Government has made a proposal to the Harbor Commission to take over Pier 45.

Q. That is the whole thing with the four sheds?
A. It hasn't been fully consummated yet.

Mr. Graham: I think that is all.

By Mr. Geary:

Q. If the Federal Government does take over with the [fol. 1537] consent of the Harbor Commissioners the entire space of Pier 45, is it the intention of the Harbor Commissioners to continue the wharf demurrage service at some other pier on the San Francisco waterfront?

A. Oh, such little of it as there is we can probably take care of at some place else.

Q. In addition to Pier 56 or at Pier 56?

A. No, in addition to Pier 56.

Mr. Geary: That is all.

By Mr. Townsend:

Q. Mr. Gates, what is the significance of producing only diagrams with respect to Piers 45 and 56? Are those the only piers where you have wharf demurrage or wharf storage?

A. Yes; that's right, for general cargo.

Q. And on the other piers what do you do if the cargo remains longer than the free time?

A. Well, we either apply what we term our "penalty rate" which is 25 cents a ton for the first five days and 50 cents for each additional five days, or under certain circumstances which are provided for in our tariff we apply what is commonly known as a "bulkhead rate," which is 12½ cents a ton for each seven days.

Q. Then on Piers 45 and 56 do you have still another storage rate that applies to what you call wharf demurrage cargo in those facilities?

[fol. 1538] A. Yes. If it is a regular operation we apply the same rates as we would on other piers. But if it definitely comes in for a period to stay for a period and take the terminal rate, why, then, that is applied.

Q. Are Piers 45 and 56 operated by the State Board of Harbor Commissioners or are those operated by other terminal operators?

A. They are operated by other terminal operators.

Q. And who operates Pier 45?

A. The Golden Gate Terminals.

Q. Do they operate the entire pier? All four sheds?

A. Yes. However, we make use of the pier for other operations whenever we need them; any of the sheds.

Q. Just what do you mean by that?

A. Well, if we have an in transit operation to take care of, and we want to handle it at Pier 45, why, we handle it there. We have the right under temporary assignment or under regular assignment to make use of any piers when they are not being used by the assignees.

Q. In connection with the operation of Pier 45 by the Golden Gate Terminals, who actually retains the wharf demurrage that accrues?

A. The Board of Harbor Commissioners.

Q. It is all turned over to the Board of Harbor Commissioners?

[fol. 1539] A. That is right.

Mr. Scoll: This is all in the record, Mr. Townsend.

Mr. Townsend: I am not sure. Unfortunately, in a hearing like this, which is disjointed, it is difficult to remember what is in the record. I don't want to go into it in detail, but I am just leading up to another point.

By Mr. Townsend:

Q. With respect again to Pier 45, you stated that the Sheds "B" and "D" are sometimes used for transit operations. When they are used for transit operations are those performed by the State Board of Harbor Commissioners or by the Golden Gate Terminals?

A. Sometimes the Golden Gate Terminals do the handling and clerking for the shipper; otherwise not necessarily.

Q. In connection with the storage of cargo on Pier 45 who performs the labor, that is, such high piling or any other handling that may be involved? Is that by employees of the Golden Gate Terminals or the State Board of Harbor Commissioners?

A. Golden Gate Terminals.

Q. Do they perform all of the operations on that pier?

A. Well, not all of the operations. As I say, there are certain operations there that are carried on perhaps with-

[fol. 1540] out them having anything to do with it at all.

Q. Are Sheds "B" and "D" on Pier 45 reserved primarily for storage or does the transit cargo have the first call?

A. Well, let me say this: That there is usually so little of the storage that in transit operations can be carried on nearly at all times.

Q. Well, is it a fair statement, then, that your storage is placed merely in space that is not needed in transit operations?

A. Well, I wouldn't put it just that way. It might be possible that there would be enough under some circumstances so that we might not be able to use one shed for transit operations, but that usually hasn't been the case.

Q. If you have some cargo on storage, we will say, in Shed "D" and it is finally determined to ship it to some out-of-state destination, would the vessel dock at Shed "D" and lift that cargo, or would the cargo have to be moved to some other pier?

A. No. It would tie up at Shed "D".

Q. So it would go directly from wharf demurrage into the vessel?

A. Yes.

Q. In connection with the operations on Pier 45 who pays for the checking of the cargo?

A. I don't know.

[fol. 1541] By Mr. Read:

Q. Does the Harbor Board pay for it, Mr. Gates?

A. No.

By Mr. Townsend:

Q. Referring to Pier 56, by whom are the operations on that pier conducted?

A. That's the State Terminal Company. Yes, that's the name of it.

Q. Does that include both the first and second floors shown on Exhibit 145 and the Annex shown on Exhibit 146?

A. No. They have nothing to do with the second floor.

Q. Just the first floor?

A. Just the first floor.

Q. And the second floor is the refrigeration terminal of the State Board of Harbor Commissioners?

A. That's right.

Q. Now, what about the Annex as shown in Exhibit 146? Who operates that?

A. The State Terminal Company has so far operated it. However, other operations could be carried on. In other words, neither of those buildings are assigned to the operators. They are simply there at the pleasure of the Board, and if some other operator or shipper wanted space in the Annex, why, they could have it without any reference to the operators of the terminal.

[fol. 1542] Q. Does the State Board of Harbor Commissioners pay for any checking of cargo on the waterfront either in Pier 45, Pier 56, or any of the other piers?

A. We do not. We handle no cargo, have nothing to do with the handling or checking of any cargo except in the refrigeration terminal where we handle the cargo ourselves.

Q. So, in so far as the operations of the State Terminal and Golden Gate Terminals are concerned, if they pay any checking charges or services they would not be reflected by the accounts that you have submitted?

A. Not at all.

Mr. Townsend: That is all, thank you.

By Mr. Graham:

Q. Mr. Gates, just one more question. In connection with the operations of the facilities at Piers 45 and 56, it is my understanding that there are really three sets of rates. That is, a penalty rate, a bulkhead storage rate, and wharf demurrage.

A. Yes.

Q. Wharf storage rate?

A. That's right.

Q. That is right, is it not?

A. That's right.

Q. And the choice of any one of those rates as to any particular lot of cargo is up to the Board of Harbor Commissioners?

[fol. 1543] A. That's right.

By Mr. Read:

Q. Mr. Gates, I want to make sure whether I drew the correct conclusion from one of your answers to a question by Mr. Townsend. The storage at Pier 45 or Pier 56 on

goods stored there, is that published in the tariffs of the assignees?

A. The storage rates are published in our tariff. As a matter of information they probably publish them in their own tariff, but that is a rate that is set by the Board of State Harbor Commissioners.

Q. And those rates are applied at all terminals on the waterfront?

A. That's right.

Q. Does the State attempt to encourage storage at those two particular docks? And when I say "storage", I mean for a term of, let us say, three, four or five or six months.

A. There is no particular encouragement.

Q. Not any more than if would be encouraged at any of the other docks?

A. No.

Mr. Read: That is all.

By Mr. Kilkenny:

Q. Mr. Gates, in your testimony as to ownership, it is a fact, is it not, that all of the piers were built by the State of [fol. 1544] California along the San Francisco waterfront?

A. That's right.

Q. Out of what funds?

A. Either out of the San Francisco Harbor Improvement Fund or out of the Harbor Bond Funds.

Q. How are they located with respect to the submerged tidal waters?

A. I don't quite understand your question.

Q. Are they all built out over the submerged tidal waters of the San Francisco Bay, all of the piers?

A. Some of them are built out over the water; some of them are built on reclaimed land.

Q. Just a few on the reclaimed land? How many?

A. In other words, there is a distinction between a wharf and a pier; a quay wharf or a pier.

Q. Yes.

A. But they are all on State property and they are all on either over the water or on reclaimed land.

Q. Reclaimed land that has been filled in by the State of California?

A. That's right.

Q. That is, previous to the filling in by the State they were tidal waters?

A. That's right.

Q. Partly submerged, at least?

[fols. 1545-1547] A. That's right.

Q. All of the structures including the piers are within the boundaries of the land that is under the jurisdiction and control of the Board of Harbor Commissioners?

A. Yes.

Q. San Francisco Harbor?

A. Yes.

Q. And they are all, of course, in the possession of the Board?

A. They are.

Q. Was there a quay wall built along the land of the bulkheads along the whole course of the Embarcadero?

A. Yes.

Q. What about the lands that now constitute the Embarcadero back of that seawall? Was that filled in?

A. That was filled, yes.

Q. And that was all land owned by the State of California at the time it was filled in?

A. Yes.

Q. In fact, all of these lands including the filled lands and the lands where the piers are located have been owned by the State since the time of its admission into the Union, is that correct?

A. That's right.

Mr. Kilkenny: That is all.

* * * * * * *

[fols. 1548-1574] B. C. Allin resumed the stand and testified as follows:

Direct examination.

By Mr. Scoll:

* * * * * * *

[fol. 1575] Q. Now, Colonel Allin, will you turn to the determination of wharf demurrage based on the Edwards formula; Exhibit 137. I think you have a copy in front of you. Before we go into that exhibit in detail I would like

to ask you one question about a reconciliation of figures. On the summary schedule, sheet 1 of the formula, Exhibit 137, the revenues from wharf demurrage in line 12 are [fol. 1576] shown as $15,935.80. Do you find that?

A. Yes, sir.

Q. In Exhibit 136 demurrage revenues, Terminal Division, are shown as $18,867.41.

Mr. Graham: The total is $19,962.70.

By Mr. Scoll:

Q. A total of $19,962.70.

A. Yes.

Q. There is approximately a $4,000 difference there. Can you explain that?

A. Possibly we have some intrastate business which was based on a per ton basis which makes up the balance.

Mr. Graham: May I ask a question there with your permission, Mr. Scoll?

Mr. Scoll: Yes.

Mr. Graham: Colonel, does this exhibit cover the fiscal year period as does Exhibit 136?

The Witness: Yes, it covers the fiscal year. It covers the same period as the financial statement.

Mr. Graham: And one more question: Do I understand, in response to your last question from Mr. Scoll, that this Exhibit 137 only covers what you believe to have been interstate commerce?

The Witness: Absolutely, yes. I would say also that this determination, this Edwards formula, is based on the [fol. 1577] wharf operation and does not include Warehouse A. If you wish that we can make similar calculation, but we did not have time to do it.

By Mr. Scoll:

Q. That may not be necessary. Your difference of $4,000 in the demurrage revenues, would that be due to the fact that demurrage revenues from Warehouse A were not included?

A. That's probably the cause of it, yes.

Q. Do you make an allocation or do you keep your accounts in such a way that you know the demurrage revenues from each one of your sheds or warehouses?

A. I wouldn't say that we keep them separate as between the individual transit sheds, but we are able to take what was handled in the warehouses out of the total in order to arrive at an accurate figure.

Q. Then the $4000 would represent, in your opinion, demurrage that was received from storage, demurrage storage in the warehouses?

A. Yes.

Q. Colonel Allin, this Exhibit 137 was prepared by the Employees of the Port of Stockton, was it not?

A. It was.

Q. By your staff. In making that allocation or in making the study which is contained in the formula, did you follow [fol. 1578] all of the allocations as they are set forth in the Edwards formula, or did you make some departures?

Q. They were all followed. Of course, you have to depart right along for the so-called "judgment" figures. But we followed the rules right through.

Q. Did you make any exceptions in some of the allocations?

A. Not that I know of. There is one point in the very end in the calculation of wharf demurrage. In view of the fact that we consider that our wharf demurrage covers normally a period of about four months out of a year, we increased the figure because we figured that that wharf demurrage puts out of business that much of the wharf during our busy season and we ought to get paid for it the whole year.

Q. What figure is that you are referring to? Will you point to it in the schedule?

A. On Schedule E, sheet 2, line 40.

Q. Will you explain your statement, Colonel Allin?

A. Well, in arriving at this last figure of twenty and a half cents, they have multiplied by three because that used our transit shed for just four months.

Q. What did you multiply by three?

A. We took the floor space cost of $19,293.05 and divided by the square foot, 34,565—(pause). Going into column (n) there is a variable overhead of $3797.22; dividing that [fol. 1579] by 6,175 tons; we then divided that by three to get at this result.

Q. You mean you multiplied by three?

A. No, divided by three instead of dividing by twelve.

Mr. Graham: Why is that? Because you only used the facility one-third of the year?

The Witness: Yes, that was the idea.

By Mr. Scoll:

Q. Have you anything you would like to add to that, Colonel Allin?

A. You mean—(pause).

Q. To what you have been describing, the overhead costs per ton month, where you said you divided the annual overhead by three instead of by twelve? Have you anything to add to that point?

A. Not to that particular point; no, sir.

Q. While you are on that page, that is, Sheet 2 of Schedule E, will you look at line 44, the first column, "Total ton-months of storage"? You have the figure "12" in there.

A. That is incorrect.

Q. What should the correct figure be?

A. You would have to multiply it out. You would have to multiply the number of months by the tons.

Q. I see. If you multiply 12 by 6,175 you would get the correct figure, is that right?

[fol. 1580] A. No, sir. If we figure that four months is the average length of time it would be four times 6,175.

Q. I see. While you are on that page still, look at Note 5. According to the Edwards formula, the unit 30 days or ton-months represents a total ton-days of demurrage divided by thirty, and it should be developed by special test or from the billing records. You didn't use your billing records, then?

A. We checked the thing and came to the conclusion that four months was an estimate.

Mr. Graham: Did you use the billing records?

The Witness: No.

By Mr. Scoll:

Q. Then let us correct the exhibit while we are at it. The figure that you would put now in Line 44 opposite the phrase "Total Ton-Months of Storage" would be how much?

A. 24,700.

Mr. Graham: Line 44, that is?

The Witness: Line 43—no, line 44 it is.

Examiner Basham: That is in place of "12"?
The Witness: It should be "24,700".

By Mr. Scoll:

Q. Are there any other corrections that should be made on Exhibit 137, Colonel Allin?

A. One other deviation from the rules. Schedule B, Sheet [fol. 1581] 2, Paragraph 9, shows an apportionment of carrying charges and under Item (d) shows an allocation of 20 per cent to demurrage. We consider that 10 per cent in our case was more proper.

Q. Well, now, will you explain why?

A. Well, we just upon investigation found that it was the proper figure to apply.

Q. Your total carrying charges, of course, are set forth in the exhibit, are they not?

A. Yes, sir.

Q. On Schedule A?

A. Yes, sir.

Examiner Basham: Colonel Allin, you said that 20 per cent should be changed to 10 per cent?

The Witness: Yes, sir. I am looking for my work sheet now.

Examiner Basham: Wouldn't that affect the other percentages, dockage and tolls?

The Witness: Yes, it would.

Examiner Basham: How would they be changed?

Mr. Townsend: Mr. Examiner, the study wasn't completed for those other phases of it. It was just wharf demurrage that we were asked to produce.

Examiner Basham: Oh, I see.

The Witness: That figure was changed because we [fol. 1582] found that the wharf demurrage actually occupied just ten per cent of the floor area of the transit sheds. From a study of it we found that it occupied just ten per cent and we accordingly used just ten per cent.

By Mr. Scoll:

Q. Is that for an annual basis or just for the four months?

A. Just for the four months. That is a maximum. In other words, just actually what was used by the wharf demurrage.

Q. What you really mean, don't you, is that for the purposes of assigning costs that on an annual basis ten per cent of the carrying charges apply?

A. Yes, yes.

Q. Colonel Allin, will you turn to Schedule B, Sheet 3, on Line 89, Unit No. 1 under "Assignment of shed area in square feet"?

A. Yes.

Q. The figure is 345,650 square feet.

Mr. Burgin: That is incorrect, Mr. Scoll.

By Mr. Scoll:

Q. What should that be?

A. No, just a minute. The size of the unit is 345,650 square feet. That is over on the left hand column.

Q. That is right. Now you move over to the wharf demurrage column.

[fol. 1583] A. Used for wharf demurrage was 34,565; ten per cent.

Q. Now, then, what I want to ask you a question about is that 34,565 figure. Does that represent the space actually occupied by the cargo or does it also include aisle space and waste space? To understand what I am driving at, suppose you look at Note 4?

A. Yes, I understand what you mean.

Q. On Sheet 2 of Schedule E?

A. That is the actual measurement of the space used by the stacks of goods.

Q. Then is it correct to say that that represents 60 per cent of the space which has to be allocated to wharf demurrage?

A. Well, I don't know. It represents the exact amount of space used by the stacks of goods.

Q. Let me ask you one further question and I think that will clear it up. Do you agree with the formula used for assigning the amount of space to wharf demurrage that is set forth in Note 4 of Schedule E of Sheet 2 of the formula?

A. Yes, I think that 60 per cent is reasonable. I think I testified to that last time.

Mr. Townsend: Mr. Scoll, may I shorten this? I know what you are driving at. May I shorten this a little?

Mr. Scoll: Sure, go ahead.

[fol. 1584] Mr. Townsend: Colonel Allin, you have taken care of the aisle space at a later time in this study, have you not?

The Witness: In Schedule E.

Mr. Townsend: Will you explain where you did that, to clear this up?

The Witness: In column (m). That is calculated in there.

Mr. Graham: Column (m) of what? Schedule E?

The Witness: Schedule E, yes.

Mr. Graham: Does that figure shown there of 34,565 on Schedule B, Sheet 3, reappear on Schedule E?

The Witness: Yes, that carries forward.

Mr. Graham: Where is it?

The Witness: (No response.)

Mr. Graham: I said, does it reappear?

The Witness: No, not the figure itself, no. But it carries forward.

Mr. Graham: So it doesn't reappear at all, does it?

Mr. Scoll: Maybe we can clear this up by one more question. All of us have tried several times now.

By Mr. Scoll:

Q. Looking at Schedule E, Sheet 2, you see there under the column (m) opposite Line 40 the figure .0775, which [fol. 1585] represents the adjusted space cost per square foot for 30 days. Now, does that figure represent an adjustment for the 40 per cent of space which is used up in aisles and waste space?

A. It does, Mr. Scoll. Just a moment! Just a moment until I find it.

Q. Does that figure take into account the adjustment upward for the 40 per cent of aisle and waste space?

A. I would have to go back and work through this formula again. It is very confusing. I think, however, it is very clear that this figure covers the actual stacks themselves. Now, if the formula requires that 60 per cent be added in, we will have to add it in.

Mr. Scoll: 40 per cent.

Mr. Graham: When you say "this figure" you mean 34,565?

The Witness: That's it.

Mr. Graham: Isn't it a fact, then, that going over to Sheet 2, Line 40, column (m) that .0775 is adjusted on the basis of 34,565?

The Witness: That I am not certain. I would have to follow the formula through. That is exactly the point.

By Mr. Scoll:

Q. Could you study the formula over the noon recess, and then when we reassemble you can straighten it out for [fol. 1586] the record?

A. Yes, indeed. I will do that.

Q. One more point, Colonel Allin. Looking still at Sheet 2 of Schedule E, you show in column (f) that you have no labor cost. In column (e) you have your high-piling cost and column (f), which provides space for other laboring costs, you show that you have no labor cost.

A. Yes.

Q. Do you see that?

A. Yes.

Q. Now, then, in view of your testimony with respect to receiving revenues from wharf demurrage in the warehouse areas, Warehouse A, don't you have some transfer charges?

A. We would in that case, yes. We would in the case of any goods moved back and forth to warehouses, yes.

Q. Well, you explained that you had $4,000 of revenues which were available from demurrage in the warehouse areas. To produce that $4,000 revenue you had some transfer of goods from the transit shed to the warehouses?

A. That's correct.

Q. And yet, according to this, there are no costs for transfer?

A. This study, as I explained, is confined to the wharf. I [fol. 1587] said I would be glad to put the figures in for the warehouse, and the warehouse figures will include the cost of that transfer.

Q. In the course of your operations, Colonel Allin, do you have occasion to shift cargo on wharf demurrage from one of the transit sheds to another or from one end of the transit shed to another end?

A. No, no, we don't.

Q. Once the cargo rests it stays there?

A. Yes.

Q. And you never have to move it to make room for transit cargo?

A. No. We try to use good judgment in how much we accept.

Q. But it would happen, as a matter of fact, wouldn't it, that some cargo once in a while at least would have to be shifted?

A. It would happen if it were congested so that it was necessary to move that demurrage freight in order to handle a vessel, yes. But in our case it has not.

Mr. Read: You don't move any, is that the answer?

The Witness: Well, we haven't. Now, we don't know what we might do next month.

By Mr. Scoll:

Q. Suppose you were to have cargo in Shed No. 6 on demurrage. Shed No. 6, you recall, is at the head of Shed [fol. 1588] No. 1, and the steamer to pick it up docked at Wharf No. 2 at the other end of the facility. Now, you would have to shift that cargo down from Shed No. 6 to the wharf, wouldn't you?

A. Well, of course, Wharf No. 2 is an open wharf. The furthest that ship would be away would be Wharf No. 3 and the probability is that it would not be berthed that far away. It woud be berthed at 5; probably 5 or 4 at the outside.

Q. Well, suppose it is at No. 4, you still have a good distance to shift it from 6 to 4?

A. We don't shift it.

Q. Somebody——

A. (Interrupting:) Somebody else does that.

Q. You mean that the stevedores——

A. (Interrupting:) Either the ship or the shipper. We don't shift it.

(Witness temporarily excused.)

Examiner Basham: We will adjourn now until two o'clock.

(Whereupon at 12:25 p. m. a recess was taken until 2:00 o'clock p. m.)

[fol. 1589] AFTER RECESS

(The hearing was resumed at 2:00 o'clock p. m. pursuant to the taking of the recess.)

Examiner Basham: Come to order, please.

Mr. Scoll: I understand, Mr. Examiner, that Colonel Allin is a little indisposed and requests to be excused for a little

while, so we can do so and resume the examination of Colonel Allin on Exhibit 137 a little later.

This might me a good time to clear up a point involving certain costs on the State and Golden Gate Terminals which might be assignable to wharf demurrage, and I think Mr. Gates can clear that point up for us.

Will you take the stand, Mr. Gates?

MARK H. GATES resumed the stand and testified further as follows:

Direct examination.

By Mr. Scoll:

Q. At the end of your testimony this morning, Mr. Townsend and Mr. Graham asked questions in connection with costs on wharf demurrage on Piers 45 and 56. Now, the operators of those terminals operate under assignments from you, do they not?

A. Yes, they do.

Q. And they rent actually only the office space they use?

A. That's right.

[fol. 1590] Q. When cargo is stored on those facilities under wharf demurrage is there likely to be some checking or handling or clerking service involved?

A. Yes, there is.

Q. And similarly, a cost for such a service?

A. Yes.

Q. If there is such a service performed and such a cost incurred that cost, of course, is not incurred by the Board of Harbor Commissioners, is it?

A. No.

Q. Would it be incurred by the terminal operator?

A. That's right.

Q. And how would he compensate himself for such costs?

A. By making a charge against the consignee or the shipper.

Q. And the charge which he makes is in the nature of a service charge or handling charge?

A. That's right.

Q. And it has been testified previously that these operators of Piers 56 and 45 publish tariffs that are on file with the Railroad Commission of California?

A. That's right.

Q. So that it would be correct, then, would it, that in so far as a clerking, handling or checking service is performed by the terminal operator and a cost incurred, the terminal [fol. 1591] operator would make up that cost in some form of the charges, either a handling or a service charge, or other charge which he would charge the cargo?

A. That's right.

Mr. Scoll: That is all, I think.

Mr. Read: Just a minute, Mr. Gates.

Are we to understand by that, Mr. Scoll, the assumption that this charge that is made by the assignee is a full compensation and includes a contribution towards wharf demurrage?

Mr. Scoll: No, I don't think we are at all, Mr. Read. All this implies is that there is undoubtedly an additional cost to the space cost involved in the wharf demurrage service on Piers 45 and 56, and that that cost is compensated for in the charges which the terminal operator charges. In other words, the record now shows that in addition to the space cost which the Board of Harbor Commissioners incurs for which it compensates itself by the demurrage revenues which it receives, there is another cost—an operating cost—which the operator incurs and which he is compensated for out of the charges which he charges against the shipper of the cargo for the vessel.

Mr. Read: But you still haven't determined what the cost of that assignee is?

Mr. Scoll: What the unit cost is, no.

[fol. 1592] Mr. Read: All right. That's enough.

Cross-examination.

By Mr. Graham:

Q. Mr. Gates, does that user of your facility in 45 and 56 pay any rental for the use of the facility?

A. No. You mean the operating company?

Q. Yes.

A. No. They pay just rental for their office space.

Q. And as to whether their tariff does or does not show what charges they make against this cargo which is held on wharf demurrage, you don't know?

A. No, I don't know.

Q. You don't know whether it is in the tariff or not?
A. No. I think their tariff is on file in this case.

By Mr. Geary:

Q. If you did charge them rent what would the basis of the rent charge be?
A. If we charged them rent?
Q. If you charged them rent.
A. Well, I don't think that we can charge them rent and then take the demurrage.
Q. No. But if that facility were being rented in the same way that your other facilities on the waterfront in San Francisco were being rented to shipowners, what would the charge for that be?
[fol. 1593] A. The charge would be 1.2 cents per square foot per month.
Q. That would be a charge of 1.2 cents per square foot per month for the entire building, not merely the dock area?
A. The entire area.
Q. Is that the present charge or is it the charge which is proposed to be increased?
A. No, that is the present charge.
Q. The present charge?
A. In other words, that is being charged right now.
Q. There is, however, contemplated an increase in that charge, is there not?
A. No, no.
Q. Isn't there at the present time a proposed increase in that rate on the San Francisco waterfront?
A. That is the rate that is being talked about.
Q. That is the rate that is being talked about?
A. In other words, I don't know whether you want this in the record or not, but I will explain that up until the first of July of this year and for many years past there is a charge of 6 mills per square foot per month to intercoastal and off-shore operators and a charge of 1.2 cents to inland water and coastwise. On July 1st the rate for intercoastal and off-shore, foreign and off-shore, was increased to 1.2 to make it the same as that for coastwise and inland water.
[fol. 1594] Q. If you charged 1.2 cents per square foot per month for those facilities and let the terminal operator keep the wharf demurrage revenue, would you receive more or less than you receive at the present time?
A. I couldn't answer that.

Mr. Geary: That is all.

By Mr. Graham:

Q. Mr. Gates, in connection with this 1.2 cents that you have charged to companies which rent your piers, in those cases where there is a charge made against cargo either in the guise of demurrage or bulkhead storage or for any other reason, you receive all of that charge yourself, don't you?

A. That's right.

Q. So that in those cases the dock operator pays you a rent for the occupation of the space and you still receive from the cargo a fee for the occupation of the same space?

A. That's right.

Q. Whereas in the case of——

Mr. Scoll: (Interrupting:) Just a moment, Mr. Graham. I think that answer should be amplified.

Now, the operator does not pay a rent for the space on which the cargo is stored, does he?

Mr. Graham: Yes.

The Witness: He pays the rental for the whole area.

[fol. 1595] Mr. Graham: He pays for the whole dock.

The Witness: He pays for the whole dock.

By Mr. Graham:

Q. To go back again to the same spot, on piers 45 and 56 the only difference between that situation which we have just discussed is that on those two piers you don't receive any rental money at all; you merely receive money that comes from the cargo for the space the cargo occupies?

A. Yes, but——

Q. (Interposing:) Call it "Wharf demurrage" or whatever you want to call it.

A. But the conditions are different on the regularly assigned piers. In the first place, we do get whatever demurrage charges accrue.

Q. In either case?

A. Because of the fact, however, that there is a penalty rate there isn't very much cargo remains on those piers after the free time. On the other hand, when we are dealing with a bulkhead rate we require that the assignee of the pier make application for that rate and that he is agreeable

to allowing that cargo to stay on the pier or else we don't grant the bulkhead rate.

By Mr. Read:

Q. It depends, then, on the occupant of the pier?

[fol. 1596] A. For the very purpose that Mr. Graham is bringing out: That he is paying the rental to the Board for that pier for operating purposes, for transit business and not storage. And so if there is some little lot of cargo that under our rules is privileged to have a bulkhead storage rate apply, we don't allow it to stay there if it interferes with the operations of the assignee of that pier.

Q. In other words, he has priority if it comes to a case of deciding whether the goods should be left on the dock?

A. In other words, to avoid any complaints from the assignee of the pier we have made a rule that he must apply for the storage.

By Mr. Graham:

Q. In the case of Piers 45 and 56 the granting of the facilities to the operators without rent enables them to make their net profit from the services that they render without any offset for the cost of the facilities?

A. That's right. I might go a little farther so long as we are in this rental business and explain also that the Board has just made a change in the tariff in regard to rentals to be effective on the 15th of this month on open berth assignment. We never charged any rental before on those assignments, and now every ship will have to pay a per diem rate of rental for the occupancy of a pier.

[fol. 1597] Q. In addition to dockage?

A. In addition to dockage. And if a pier that is already assigned is used, then that rental will be refunded to the regular assignee of the pier.

By Mr. Townsend:

Q. Mr. Gates, I want to ask a few questions with respect to Piers 45 and 56. Do the figures that you have submitted here in Exhibit 135 cover the carrying charges on the facilities that are included in Piers 45 and 56?

A. The carrying charges?

Q. Well, somewhere in there you have the cost of maintaining those particular piers, do you not?

A. Oh, yes.

Q. And the other incidental charges in connection with those facilities?

A. I am not familiar with the details of that statement. Mr. Smith is and he can explain what is included in those charges.

Q. Now then, referring again to those two piers, is it correct that you do not have in any of those figures that you submitted here anything that would show any expense in connection with collecting incident to wharf demurrage on those two piers?

A. No, no clerk.

Q. And there is likewise nothing with respect to any ex-
[fol. 1598] pense of handling high-piling, is there?

A. No.

Q. And, again confining my questions to those two piers, there is nothing in there including the expense of cleaning the sheds and docks?

A. No.

Q. Nothing for watchmen in connection with the wharf demurrage?

A. No, no watchmen.

Q. How about power for dock use?

A. I will have to refer to Mr. Smith and have him answer those questions. On some of those details I am not familiar with what is in there. I know that some things are not in, but I don't know what the others are. I would rather you would ask Mr. Smith those questions.

Mr. Townsend: I will accept his answer if that may be done right now. I would like to run down the list. Perhaps he had better come forward.

Examiner Basham: Let us get through with Mr. Gates.

Mr. Scoll: Why don't you ask Mr. Smith if he prepared the exhibit and he is more familiar with it?

Mr. Townsend: All right, then. One more question along that line of questioning of Mr. Gates.

By Mr. Townsend:

[fol. 1599] Q. In so far as your docks other than Piers 45 and 56 are concerned, where you say you sometimes have some storage or bulkhead storage or whatever you call it, do you perform any of the labor in connection with that type of storage by employees of the Board?

A. No. The only cost there would be the regular cost of our wharfinger or keeping track of it, billing it.

Q. But those expenses in connection with wharf demurrage on the piers other than 45 and 56 would also be performed by the assignees of those particular piers?

A. That's right.

Q. With respect to the checking of cargo to and from wharf demurrage on piers other than 45 and 56, do you know who performs that service?

A. Well, our wharfinger keeps track of that.

Q. Well, does the wharfinger——

A. (Interrupting:) Now, the actual checking for other purposes is done by the steamship company on the pier, the assignee of the pier, no doubt.

Q. For the purpose of keeping a record incident to wharf demurrage, would that checking be done by the employees of the assignee of the pier?

A. Our wharfinger keeps the record of the cargo there on those piers on demurrage.

Q. Who actually does the checking?

[fol. 1600] A. Well, he checks with the representatives of the steamship company.

Q. And then the steamship company does have some expense incident to checking that cargo?

A. I think so.

Q. And that would be the staff of men, for example, who do the actual checking, and your wharfinger is just there to go along with them and make a record of it, so to speak?

A. That's right.

Mr. Graham: Mr. Townsend, do you include when you say "steamship company" the assignee of these two respective piers?

Mr. Townsend: My last few questions, you understood, were directed to the piers other than 45 and 56?

A. That is my understanding.

Mr. Townsend: I think that is all I have of Mr. Gates.

By Mr. Read:

Q. Mr. Gates, you make no charge against the assignees of Piers 45 and 56 as you do against the assignees of the other docks?

A. That's right.

Q. Did you say that if you did make such a charge then you couldn't very well collect demurrage charges?

A. I will put it the other way: If we made a charge for [fol. 1601] the rental I don't think that they could very well pay that rental out of what they get for handling the checking and one thing and another.

Q. Yet at the other piers where steamship lines have the assignees and you get paid your regular space rate you also take the revenue from the demurrage?

A. Yes, we take the revenue from the demurrage. There is very little of it, to speak of.

Q. Do the assignees at Piers 45 and 56 have to give consent to this storage before it is permitted the same as the assignees of the other piers do?

A. No.

Q. Is it up to their judgment whether to take it or not, or does the Harbor Board decide that?

A. It is pretty much of an understanding among us always. The stuff is moving in and out and they talk to us about it.

Mr. Read: That is all.

Mr. Townsend: I have one more question, if I may.

By Mr. Townsend:

Q. With respect to piers other than 45 and 56 does the State Board of Harbor Commissioners issue any documents in the nature of dock receipts or warehouse receipts for cargo that is held there under wharf demurrage or wharf storage?

A. They do not.

[fol. 1602] Q. In other words, you don't assume any custody over those goods?

A. No.

Q. Is the same situation true on Piers 45 and 56?

A. That's right.

Mr. Townsend: That is all, thank you.

Redirect examination.

By Mr. Scoll:

Q. One further point: Mr. Gates, will you supply for the record any changes that have been made in your tariff in-

troduced into the record—I don't have the exhibit number—any changes that have been made since February 21, 1940 down to date?

A. February 21? I shall be glad to do that.

Q. If you have re-issued your tariff and have a current tariff effective, if you will supply that for the record that will suffice.

A. I will be glad to do that.

Mr. Scoll: The same request goes to all the other respondents. I would like the record to show that the tariffs now on file or made a part of this record, rather, be brought down to date.

Mr. Read: Suppose each respondent furnishes a copy of the current tariff, Mr. Scoll, wouldn't that do?

Mr. Scoll: That will do fine.

[fol. 1603] The Witness: Mr. Examiner, Mr. Geary asked me a question this morning in regard to the areas inside the shed.

Mr. Geary: That is right.

The Witness: I find that——

Mr. Geary: (Interrupting:) That is on Pier 56.

The Witness: On Pier 56 I find that the area inside the shed is 108,390 square feet.

Mr. Geary: That is on the first floor.

The Witness: That is on the first floor.

Mr. Geary: Thank you very much.

(Witness excused.)

Mr. Townsend: May I ask some questions of Mr. Smith now?

Carl M. Smith resumed the stand and testified further as follows:

Further cross-examination.

By Mr. Townsend:

Q. Mr. Smith, I want to go back to some of these detailed questions I was asking Mr. Gates. Do the figures that you have submitted, and I will assume that they would be in Exhibit 135, cover the carrying charges on Piers 45 and 56? And by "Carrying charges" I mean such things as

maintenance, depreciation, interest on investment and so forth.

A. Yes, but not definitely shown in the statements. But [fol. 1604] they are included in the total.

Q. They are in there somewhere?

A. They are in there.

Q. And are the carrying charges on the land on which Piers 45 and 56 are located included in those figures somewhere?

A. The carrying charges on the land? No.

Q. Is there anything included in the figures that you have submitted that would cover superintendence on Piers 45 and 56?

A. There is a total item in the exhibit here, but may I explain a bit about that?

Q. Yes.

A. In our exhibit that we have shown here there are only two instances where any direct charges are shown against Facilities 45 and 56, and that is direct maintenance where the crews have gone down and actually performed repair work on those two facilities. That is indicated in the exhibit. But in addition to that we have large amounts of other expenditures in conjunction with operating all facilities on the San Francisco waterfront which, if a proportion of them were going to be allocated against any particular facility, such as 45 and 56, it would involve a distribution problem which we haven't gone into on the exhibits submitted.

Q. What are the expenses of the latter character, for illustration?

[fol. 1605] A. Well, referring to Account 2, Schedule 2 of our exhibit there is administration, there is the entire group of port operating expenses. Then in port maintenance, outside of the direct maintenance contained in Account 605 and Account 606, there are many other maintenance items there that all have relationship to performance of maintenance work on the San Francisco waterfront, but they are not allocated against any particular facility. For instance, in explaining that, we will take possibly one item here: Dredging basins in channels. That would be one of them. Also the maintenance of pile driving equipment, the maintenance of tugs and dredges. That is all part of our general maintenance cost in the San Francisco Harbor, but we don't allocate it against any facilities.

Q. If I understand you correctly, the situation is briefly this: That in so far as Piers 45 and 56 are concerned you do have in your figures that you have submitted in this proceeding, although they are not specifically referred to Piers 45 and 56, direct maintenance costs, what we might call indirect or general maintenance costs and what we might call general and administrative expenses?

A. They are in here; yes, sir.

Q. But there are no, what we might call, dock operation expenses shown in there in so far as Piers 45 and 56 are concerned?

[fol. 1606] A. By "dock operation expenses" you mean the handling of cargo?

Q. Well, let me show it to you this way. I show you Schedule B, Sheets 1 and 2 of the so-called Edwards formula, and I happen to be referring to Exhibit 137. Will you examine the items under Section II, dock operations, and tell me whether any of the items listed there are expenses shown in any of your exhibits covering Piers 45 and 56?

A. There are two items there included in that category that are contained in our exhibit here, although not directly allocated against those two particular units. That's power for dock use and water for dock use.

Q. Other than those there are none of those items?

A. There are not; no, sir.

Q. Referring again to Schedule B of Exhibit 137, which is the Edwards formula, and turning this time to Sheet 3 of that exhibit, do you include in any of the figures that you have submitted any of the expenses that might be assignable to the Piers 45 and 56 under the heading of Section V, General and Administrative Expenses, or let me put it the other way, Are those all included?

A. Yes, they are in there.

Mr. Scoll: They are not assigned to the piers?

A. No.

[fol. 1607] Mr. Townsend: That is all I have, thank you.

By Mr. Read:

Q. One more question. Mr. Smith, with reference to Exhibit 135, Account 2, Schedule 2, an item of $52,649.76, Account No. 505, State Refrigeration Terminal; does that include the cost of an engineer or engineers and others who are employed by the Harbor Board there?

A. That includes all expenses of operating the State Refrigeration Terminal. That's the refrigeration engineers, the refrigeration attendants and the superintendent and his assistant.

Q. I see. And you have isolated from all other expenses the expense of this State Refrigeration Terminal?

A. Absolutely. That's a clean-cut figure representing the costs of operating the State Refrigeration Terminal for cold storage purposes.

Mr. Read: That is all.

Examiner Basham: Is that all? (No response.)

You are excused, Mr. Smith.

(Witness excused.)

Mr. Scoll: Mr. Parr.

FRED D. PARR resumed the stand and testified further as follows:

Direct examination.

By Mr. Scoll:

[fol. 1608] Q. Mr. Parr, I have requested the several respondents in this case to furnish for the record the information that will show the amount of cargo on storage during the last fiscal year of their operations expressed in tons and the amount of cargo that moves over the terminal or moved over the terminal in the same period, those figures to exclude pipeline cargo and to segregate lumber. Have you furnished those figures?

Mr. Read: Mr. Scoll, I will introduce those with another witness.

My understanding was that Mr. Parr came up to testify regarding Exhibits 133 and 134. Furthermore, I did not understand that there was to be an exclusion of pipeline. I had no understanding and wouldn't have assumed it to be such, since we are relating these charges to total cost of operation, and pipeline is simply one of the services included within the total operation of the piers.

Mr. Scoll: Yes. My purpose in excluding pipeline, Mr. Read—we brought that up in connection with Oakland and you were here yesterday, I believe, when it was discussed—

is to deal as far as we can with cargo that would be stored on the wharf and to compare that with all other transit cargo.

Mr. Read: Well, pipeline cargo is transit cargo just as much as packaged cargo.

[fol. 1609] Mr. Scoll: Can you segregate pipeline cargo?

Mr. Read: I will try to and I believe we can. However, if you will allow me to introduce that through another witness after Mr. Parr, I think we will satisfy your needs.

Mr. Scoll: All right. Thank you very much.

By Mr. Scoll:

Q. Have you a copy of Exhibit 133, Mr. Parr? Will you turn to the first sheet "Schedule No. 6" I believe it is named there, showing the operations for 1935? I note that in your operating expenses the provision for maintenance and upkeep total is $376.50. Does that represent the total expenditures from all sources for maintenance and upkeep of the Terminals Nos. 1 through 4 for that year?

A. That's so far as our corporation is concerned.

Q. Well, there were no maintenance expenditures, then, by the City of Richmond shown?

A. That's correct.

Q. I see that there is no provision for taxes made on that sheet showing what was spent for taxes in that year. I presume that means that the Parr-Richmond Terminal Corporation paid no taxes.

Mr. Read: When you speak of "taxes", Mr. Scoll, do you refer to property taxes?

Mr. Scoll: Well, I don't see any tax item.

[fol. 1610] By Mr. Scoll:

Q. Let me ask you a further question: The major tax items in your operation would be property taxes, would they not?

A. That's correct.

Q. Looking at the year 1939 I see no provision there for payment of either property taxes or security taxes.

Mr. Read: If you look at the last page, Schedule 7, Mr. Scoll, you will see an entry there reading "Payroll taxes, $3,056.72."

Mr. Scoll: Yes, all right. That takes care of the security taxes.

By Mr. Scoll:

Q. What about property taxes?

A. We pay a property tax. I don't just see it in this statement, Mr. Scoll. I shall be glad to furnish you a detailed statement of the taxes paid.

Q. Well, you pay a property tax. Is it a City tax?

A. We pay a City tax, also a County tax. But on part of our improvements we do not pay any City tax.

Mr. Graham: Mr. Scoll, may I suggest if you are going to get any statement that you include not only property taxes but corporate franchise taxes and income taxes that might be chargeable against these operations?

Mr. Scoll: I am not quite through yet of the things that I want to get on the list.

[fol. 1611] By Mr. Scoll:

Q. Looking through the list Exhibit 133, the years 1935 to 1939, I find no provision for depreciation on the improvements on real property.

A. The reason for that is that part of the facilities are leased from the City of Richmond, in which we have no investment; and the other is the money advanced by us to pay for certain improvements which are being paid for by the City of Oakland.

Q. As to the first par of your answer, which of the terminals are leased?

A. The Terminal No 1, Terminal No. 2, the north half of Terminal No. 3 and No. 4.

Mr. Read: All of No. 4?

The Witness: All of No. 4.

By Mr. Scoll:

Q. So that we have remaining to deal with one-half of Terminal No. 3. How are those payments that you referred to, I believe you said, from the City to the Terminal Company?

A. That's correct.

Q. How are they reflected in Exhibit 133?

A. They come back through the Improvement Fund and as the earnings are created on the City's portion of the facilities those moneys are used to pay us for the cost of the [fol. 1612] improvements on the south half of No. 3.

Mr. Read: The next to last line, Mr. Scoll, on Schedule No. 6 shows the distribution of profits, City of Richmond, and then certain amounts. Those are the amounts that are applied against the indebtedness to the Parr-Richmond Terminal Corporation.

By Mr. Scoll:

Q. And then turning to the sheet which has the year 1939 on it, the portion which accrues to the terminal from the City of Richmond is $33,063.02, is that correct?

A. That's correct, except this, Mr. Scoll: The first two items, the $15,536.77 and the $7,442.63, apply against this fund. The $10,083.62 is paid to the City in cash. The lease on Terminal No. 4 is different from the lease on the other facilities.

Q. So the $7,442.63 shown at the bottom of the page for 1939 represents in effect funds which the Terminal Corporation holds back to reimburse itself for the half of Terminal No. 3 which the corporation constructed, is that correct?

A. Yes, and in addition thereto the $15,536.37.

Q. And that is for similar arrangement applicable to Terminals Nos. 1 and 2?

A. That is correct.

Mr. Read: No, wait, Mr. Scoll! I think there is a misunderstanding there. The distribution of profits from [fol. 1613] Terminals 1 and 2, together with the distribution from Terminal No. 3, are all applied against the indebtedness on Terminal No. 3.

By Mr. Scoll:

Q. Well, those amounts $7,442 and $15,536, are credits to pay off the Terminal Corporation for the construction of facilities?

A. That's correct.

Q. And when you have reimbursed yourself completely for those structures, then I presume they revert to the City of Richmond?

A. Not in this case, no.

Mr. Read: Mr. Scoll, it is just one structure, bear in mind. I don't know whether you have that clear or not.

Mr. Scoll: I have the map here, but it isn't entirely clear from this map.

Mr. Read: The City is not indebted to the Parr-Richmond Terminal Corporation in any way for Terminals 1 and 2. The indebtedness is entirely on No. 3.

Mr. Graham: Don't they pay for No. 3's indebtedness on the earning from No. 2?

Mr. Read: That is what I said.

Examiner Basham: Off the record.

(Remarks outside the record.)

[fol. 1614] By Mr. Scoll:

Q. To further clarify the point, let me ask a couple of more questions. Terminals Nos. 1 and 2, which is in reality one building on the slip, is it not?

A. No. 1 is at the Outer Harbor, No. 2 is at the head of the Inner Harbor.

Q. Oh, yes. I am sorry. Let us take Terminal No. 1 alone. Under what arrangement was that constructed?

A. It was constructed by the City of Richmond.

Q. And I believe you have stated that you lease that?

A. Yes.

Q. From the City of Richmond?

A. Yes.

Q. Now, Terminal No. 2 is similarly leased from the City?

A. That is correct.

Q. And was constructed by the City?

A. Yes.

Q. Then is it correct to say that the $15,536.77 at the bottom of page 1939 is a credit to reimburse the Terminal Corporation for its investment in the structure comprising one-half of Terminal No. 3?

A. That's correct.

Q. And the same thing is true of the $7,442.63, at the foot of the schedule referring to 1939?

[fol. 1615] A. Yes.

Mr. Read: Mr. Scoll, it might help you, and clear up the record, too, to call your attention to Exhibit 134, the Parr-Richmond Terminal Corporation balance sheet as of December, 1939 where under the heading "City of Rich-

mond Improvements" there is the item $183,802.81. That is the amount of money owing the Parr-Richmond Terminal Corporation by the City of Richmond at that time against which these credits are applied, thereby diminishing that amount as each credit to the City of Richmond is applied against the debit.

By Mr. Scoll:

Q. I don't see anywhere on Exhibit 133 any accruals for depreciation and I don't see anywhere in Exhibit 134 any amount set aside for depreciation, except the depreciation on fish plant facilities, which is set forth in Exhibit 133. Are there any depreciation charges or accruals made on plant facilities?

A. None other than the fish plants and furniture and fixtures.

Q. The fish plants are not a terminal property, are they?

A. They are adjacent to the terminal property.

Mr. Read: They are non-operative properties, Mr. Scoll. [fol. 1616] The Witness: Non-operative.

By Mr. Scoll:

Q. Has there been any change in the amount of annual carrying charges on the corporation's properties, terminal properties, since 1935?

A. No substantial change.

Q. I notice also on Exhibit 133 that there is no item for interest charges. Does the Terminal Corporation pay any interest charges on bonds or other indebtedness related to the construction of facilities?

A. Yes.

Q. Where is that report?

Mr. Read: Look at Schedule No. 2 attached to Exhibit 134, Mr. Scoll.

The Witness: Mr. Scoll,——

Mr. Scoll: I am looking at Schedule 2. What item are you referring to?

The Witness: Mr. Scoll, may I answer that? You are looking at a statement as of December 31, 1939 when we have taken our profit or loss, and these items have been marked off in our loss for the year and are reflected in the net profit shown at the bottom of the page as $23,964.27. If

you would like to have a statement prior to the time that we took our profit and loss showing this net result, we shall be glad to furnish it.

[fol. 1617] By Mr. Scoll:

Q. Yes. I would like to have a statement which shows any payments for interest on bonds, if any were made.

A. We pay interest on bonds of around $13,000 a year and then on the bank loans of possibly five or six thousand a year.

Q. Well, such interest payments, it seems to me, should appear in your Exhibit 133, your statement of revenues and expenses, as well as the overhead items. So I suggest that, if you will, you submit a revised Schedule No. 7 which will show interest payments. Will you do that?

A. We will be glad to do that. Of course, this statement deals entirely with our operating arrangement with the City of Richmond, and then our other statement has to do with our general operations and we have always carried that item as a part of our general operations and not as a dock operation.

Q. Will you also show in your Revised Schedule No. 7, the taxes that are paid, including Federal income and property and corporate franchise taxes?

A. Yes.

Q. There is an item in here for general insurance $2,330. Is that all the insurance expense that is incurred or was incurred during the year 1939?

A. Yes.

[fol. 1618] Q. Does that include insurance on the terminal sheds and fire and other coverage on the terminal properties?

A. Yes, except the City's portion, which the City insures itself.

Q. Well, what portion does that $2,330 item apply to?

A. That would apply to our south half half of Terminal No. 3 and such equipment and furniture as we might have.

Mr. Read: That equipment and furniture, Mr. Parr, would be located at all docks, would it not?

The Witness: Yes.

By Mr. Scoll:

Q. Then you split the other overhead expenses between yourself and the City of Richmond on the terminals which you lease from the City?

A. Yes.

Q. The same way as you do insurance?

A. We don't split the insurance because the City pays the insurance direct on its portion. We have to pay the insurance on the labor and all things having to do with the operations.

Q. Of the other terminals?

A. Yes.

Q. Is that included in the $2,330?

A. Yes.

Q. Mr. Parr, perhaps some of these apparent omissions in [fol. 1619] the operating statement here might be clarified by reference to such statements as the parent corporation operating the terminal and the parent of the Parr-Richmond Terminal Corporation keep. Do you have any statements for the parent corporation available?

A. We have them at our office.

Q. Would they contain information showing the taxes?

A. No, that's all in the——

Q. (Interrupting) Insurance and other matters?

A. No. That is all in the Parr-Richmond Terminal Corporation, our general statement, which we will be glad to furnish to you.

Q. What about dredging costs? Do you have any dredging costs?

A. We have some dredging in connection with our fish canneries, our non-public utility operations, and the other dredging is taken care of by the City and the Federal Government.

Q. The maintenance and upkeep item in the year 1939 here is $354.95 for Terminal No. 3. In other words, that applies only to one-half of the Terminal No. 3?

A. That is correct.

Q. Well, then, you have $8,631.51 maintenance and upkeep for Terminal No. 4. That terminal is leased and you provide for the maintenance?

A. That's correct.

[fol. 1620] Q. And upkeep?

A. That's correct.

Q. Do you still carry the maintenance on Terminal No. 4?

A. Yes.

Q. Has the Parr-Richmond Terminal Corporation ever made any study that would develop the unit cost of furnishing wharf demurrage or wharf storage on the facilities which it operates?

A. We made some studies since this hearing was called.

Q. Is this the study, Exhibits 133 and 134, or have you some other information?

Mr. Read: We have nothing in the way of an exhibit, Mr. Scoll. When I put the next witness on we will introduce certain evidence regarding some investigations we have made trying to determine some of the factors. But, of course, not all of them, as we explained to Mr. Carlon, because of the complicated structure of the accounts in Richmond with the City being mixed up in the thing we didn't have the time to do it.

Mr. Scoll: Are you going to put on an accounting witness?

Mr. Read: I am going to put on Mr. Engel, our operating manager, who is quite familiar with the operations of the terminal.

Mr. Scoll: All right. That is all, Mr. Parr.

[fol. 1621] Cross-examination.

By Mr. Read:

Q. Mr. Parr, you and I have discussed the Dr. Edwards formula to some extent with reference to this demurrage question, have we not?

A. Yes.

Q. You are familiar with it to this extent: That you know that Dr. Edwards' formula contemplates a charge that he calls "Receiving and Delivering Charge" in addition to the factor for storage?

A. Yes.

Q. Do you consider it reasonable to impose a charge of that sort on cargo that is under demurrage when you do not actually perform any additional service?

A. No.

Mr. Geary: May I ask, Mr. Examiner, what difference it would make whether Mr. Parr considers it reasonable or

not? Isn't that something which we are here determining, whether the Maritime Commission is going to make an order in this case to determine whether it is or is not reasonable?

Examiner Basham: I take it that he is testifying as an expert on transport operations.

By Mr. Read:

Q. Mr. Parr,——

[fol. 1622] Mr. Geary: (Interrupting) You needn't bother qualifying Mr. Parr. So long as the Examiner has overruled the objection, go ahead. I will stipulate to his qualifications.

By Mr. Read:

Q. We also discussed the theory expressed by Dr. Edwards at pages 157 and 158 of the final report, where he says: "Charge the labor of checking cargo to and from the vessel or to and from the shippers and consignees to Service Charges." Then it goes on to say "If, however, such cargo remains in the hands of the terminal beyond the free time period and passes into the status of wharf demurrage or storage, the subsequent cost of delivering it to the consignee should be charged to wharf demurrage or storage. This is upon the principle of the carrier's responsibility for recompensing the terminal for such clerical expenses ceases upon the expiration of the free time period."

As a terminal operator do you agree with that theory?

A. No. I would think, Mr. Read, that——

Mr. Scoll: (Interrupting) A little louder, please.

A. (Continuing) I would think that your service charge would cover all of the costs involved in that item.

By Mr. Read:

Q. Do you consider demurrage or storage charges a source of additional revenue that you would not otherwise [fol. 1623] derive if it were taken from the terminal within the free time?

A. Yes.

Q. If this Commission should issue orders increasing the storage charges which would result in the loss of the revenue that is now being derived from that source, would you

have any other services from which you could recover that loss?

A. No.

Q. I will ask you the next question strictly with regard to the operations of the Parr-Richmond Terminal Corporation. At pages 100 and 101 of his report Dr. Edwards allocates to demurrage costs 7.10 cents per ton of non-variable overhead, and 9.17 cents per ton for 30 days of the variable overhead costs, and, as we will show by Mr. Engel when he takes the stand after you, the average cost of overhead of the Parr-Richmond Terminal Corporation for the period 1935 to 1939 ranged from 18.48 cents to 25.92 cents per ton. In relation to that cost of the Parr Terminal do you consider the allocations Dr. Edwards sets up in this report of his as a reasonable or an equitable allocation?

A. I would think they would be too high.

Mr. Graham: You mean too high based upon a statement such as this Exhibit 133, Mr. Parr?

The Witness: Yes.

By Mr. Read:

[fol. 1624] Q. Is it or is not your opinion as a terminal operator and through your dealings with the patrons of the terminal that with respect to the commodities in which you are actually interested, because I understand many of the commodities for which storage rates are published are not handled over the Parr Terminal, that while some of these particular commodities might stand some increase and such increase appear justifiable because of the value of the commodity, nevertheless the present rates being charged are nearly all that the traffic will bear?

A. That is my opinion, yes.

Q. Have you had any experience, Mr. Parr, in attempting to bring additional storage or demurrage to your terminal where those with whom you have been negotiating have made known to you low rentals on what we might term old buildings in the vicinity of Richmond which would give them a lower floor space cost?

A. Yes.

Q. Will you tell us something about that, please?

A. Well, I think of two off-hand: One is Felice & Perelli Canning Company that is storing in an uptown building, hauling their goods uptown and hauling them back instead

of storing in our building; another is the California Spray Chemical Company, which is storing uptown and hauling the goods down to our dock for shipment.

[fol. 1625] Q. Have any of these people with whom you have negotiated ever made mention of possible difficulty through labor disturbances on the dock should they have their goods in storage there?

A. Yes. Felice & Perelli did.

Q. That is to say, that if they had goods on the dock that should there be a tie-up because of maritime labor trouble, these people also would be tied up for the duration of that labor disturbance?

A. Yes.

Q. As I understand it, Mr. Parr, the commodities that the Parr-Richmond Terminal are really interested in are petroleum products, canned goods, insecticides, slate granules and steel sheets?

A. That's correct. There might be one or two other items as time goes along, but those are the major items with which we are concerned.

Q. And is it your wish because of the circumstances that attend the operations at the Parr-Richmond Terminal that you would like to have the Commission consider very carefully the harm that might result by increasing the rates on these commodities?

A. We are very anxious that we get special consideration for those items. We have practically a 70 per cent vacancy in our docks, and if we can maintain these commodities and [fol. 1626] do no injury to anyone else we would like to do it.

Q. And as to the other commodities that are involved or may be involved, you are quite willing that the other respondents here introduce testimony which will enable the Commission to make a proper finding as to rates on those commodities?

A. Yes.

Mr. Read: That is all.

By Mr. Graham:

Q. Mr. Parr, on Schedule 6, year 1939, under "Operating Expenses" and "Terminal Overhead" you don't show any rent or lease money paid for these facilities at all?

A. That's correct.

Q. It is a fact, is it not, that the premises on which you operate, with the exception of half of Terminal No. 3, are all owned by the City of Richmond?

A. Yes.

Q. That as to the half of No. 3 you have a contract with the City of Richmond by which they are purchasing that half?

A. They are paying for it out of the earnings.

Q. Yes. So that when you get through with this contract of purchase you won't own any facilities there at all?

A. We will own the south half of Terminal No. 3.

Q. I thought the City of Richmond were purchasing it.

A. The City of Richmond is paying for it, but the facility [fol. 1627] will be our property.

Q. In other words, you put up the money to build the south half of Pier No. 3?

A. That's right.

Q. And you are operating Pier No. 3?

A. That's right.

Q. Both the south and the north half?

A. That's right.

Q. And under this contract the City of Richmond is paying you back for the money you have put into it, and when they get through paying you back you will own the facility?

A. That's correct.

Q. Do I understand correctly that you do not pay any rent or any lease money or any other sums for the use or occupancy or operation of any of those facilities?

A. The City gets one-half and we get one-half of the net profits from the operation of the other facilities.

Mr. Read: May I interrupt just a minute? I think I will clear it for you, Mr. Graham.

By Mr. Read:

Q. In other words, the division of profits to the City of Richmond is the consideration that would correspond to a definite amount stipulated to be paid for the lease of the properties?

A. That's right. When we went to the City of Richmond [fol. 1628] we had to assume all obligations for operating the property. If we made any money we get half and they get half. If we make nothing the loss is ours.

By Mr. Graham:

Q. And, consequently, you, not owning any of those properties, don't take any depreciation on any of them at all.

A. No.

Q. And you don't account in your own accounting records for any of the items of expense which would properly be accounted for by a terminal owner?

A. Except other public bodies that eliminate certain items because they are public bodies, such as being tax free and so forth.

Q. I don't think you understand my question. As an owner of a facility you would have to set up in your account certain charges such as depreciation and such as taxes and such as maintenance and those sorts of things which an owner has to pay out. Some of those are reflected in your statement as an operator of a facility?

A. No. The point I made was, Mr. Graham, that there are no taxes on some owners of dock facilities.

Q. I was coming to that next. So that in order to get to a proper appreciation of the problem of the costs of operation of those particular facilities up there one would have to have, in addition to these Exhibits 133 and 134, informa-[fol. 1629] tion from the City which was similar to that supplied by private owners of facilities?

A. Of course, the question is where you stop including costs. Do you include dredging?

Q. No, no. I understand that. But you answer my question first. You would have to have in order to get a proper appreciation of this problem the records of the owner, which in this case happens to be the City of Richmond.

A. I suppose it would be the same as the Harbor Board in San Francisco.

Q. Yes. On this Exhibit, Schedule 6 and Schedule 7, 1939, the last figure on the bottom of the page of Exhibit 133 for the year 1939 is "Par-Richmond Terminal Corporation $68,115.47." I take it that must be net profit before deduction of taxes which accrues to Parr-Richmond Terminal Corporation to be split fifty-fifty with the City of Richmond?

A. No. The City of Richmond gets the $33,000, the Parr-Richmond Terminal $68,000, but we have to take care of all of our overhead expense out of our $68,000.

Q. Well, then, the figures $68,115.47 less $39,000, which gives you $28,895, is not split with anybody then?

A. That would come to us, that net.

Q. Then, as a matter of fact, the City of Richmond does [fol. 1630] not receive half of your net profit?

A. If you will notice the next-to-the-bottom line you will see $15,536.77.

Q. Let us go to the totals. The totals are easier to work on. $33,063.02——

A. (Interrupting:) Mr. Graham, you can hardly work on totals because the conditions are different at the different terminals.

Q. I see. All right.

A. At the first column, No. 1 and No. 2 are divided fifty-fifty between the City and ourselves.

Q. That is right.

A. And Terminal No. 3, the north half being owned by the City on which there is a fifty-fifty split, the south half being owned by us, in which there is no division for accounting purposes, we allow one-quarter to the City and three-quarters for ourselves. That's why the difference there.

Q. I see.

A. On Item No. 4, the division is 25 to the City and 75 to us.

Q. So that it isn't entirely correct to say that you have an arrangement with the City of Richmond for a fifty-fifty split of the profits? Your most recent testimony more nearly describes what your arrangement is?

[fol. 1631] A. That's correct.

By Mr. Read:

Q. Before you go on, you said, Mr. Parr, that this allowance of division of property to the City of Richmond did not contemplate a deduction for terminal overhead, that you had to assume that out of the $68,000?

A. Yes.

Q. What is the entry fourth from the bottom in "Total" $39,220.35 for terminal overhead that has been deducted from the gross profit?

A. That is terminal overhead. We have bond interest and general taxes and other expenses that are deducted from this $68,000.

By Mr. Graham:

Q. That is right. So that this figure $68,115.47, is your net profit for the operation of these facilities less taxes which you pay?

A. Taxes and interest we pay on our bond issue.

Q. Which is not in this statement either?

A. No.

Q. That is right. You haven't any idea, I don't suppose, what depreciation the City of Richmond takes on these facilities which you operate?

A. None, because they are paid for through a bond issue which, in turn, has been paid for or is being paid off and [fols. 1632-1728] no depreciation is taken by the City on these facilities, so far as I know.

Q. Have you any idea of what the yearly amortization is on those bonds?

A. The bond issue was $670,000, as I recall it; the last bond issue. And I am not certain as to the number of years it runs.

Q. May I ask you, Do you know whether the public records of the City of Richmond will reflect the cost to the City of Richmond of these facilities; that is, their annual costs?

A. I doubt it.

. . . . . .

[fol. 1729] B. C. Allin resumed the stand and testified further as follows:

Direct examination.

By Mr. Scoll:

Q. Colonel Allin, have you your note papers there in connection with the application of the Edwards formula to your wharf storage and demurrage charges?

[fol. 1730] A. Yes, I have.

Q. Would you turn to Schedule A, please, the formula as filled out. At line 18 you show "Return on structures and facilities, $74,909.39."

Mr. Graham: What page is that?

Mr. Scoll: Schedule A, Sheet 1, Line 18.

A. I might say, we base that on 6 per cent, but that is not what the bonds carry. I would say that 4¼ per cent is what is actually returned on the bonds, the interest.

By Mr. Scoll:

Q. No. What I want to know is what percentage of return represents $74,909.39? What per cent does that represent?

A. That is based on 6 per cent.

Q. Six per cent?

A. But I am saying that although we based it on that, the actual interest on our bonds would average 4¼.

Q. But you used 6 per cent to arrive at that figure?

A. That is right.

Q. And turning to Line 22, what per cent did you use to arrive at the figure of $2,400.00?

A. The same.

Q. Six per cent?

A. Yes.

Q. Will you turn over to Schedule B, Sheet 3, Line 91? [fol. 1731] In the first column is the figure 345,650. Now, what does that represent?

A. It represents the total square feet in the wharf sheds.

Q. That would be——

A. (Interrupting:) Wharves 3 to 8, inclusive.

Q. 3 to 8, inclusive?

A. Yes.

Q. When you say, "Wharves 3 to 8" you mean the structures that are shown on Exhibit 139 as Transit Sheds 3 through 8?

A. Yes, and also No. 1. I omitted that one there.

Q. 1, 3, 4, 5, 6, 7, and 8, is that correct?

A. Yes, sir.

Q. You didn't include Warehouse A?

A. No.

Q. And that represents the total floor space in those sheds?

A. That's correct.

Q. And looking at Column (b), the wharf demurrage column on Schedule B, Sheet 3, the figure of 34,565 is shown. That represents, does it, the annual average of floor space occupied?

A. That was the actual floor space used in that particular accounting period.

Q. As an annual average?

A. No. It wasn't an annual average. It is an actual [fol. 1732] figure. In other words, I believe I explained

that that is put in to use for wharf demurrage at our busy season, so it simply takes out of circulation for practical purposes, that much transit shed space for the entire year and it is the actual figure of square feet used in wharf demurrage.

Mr. Graham: That only covers four months, I think you testified?

The Witness: Four months, which is our busy season.

By Mr. Scoll:

Q. And it is floor space that was occupied by cargo?

A. Yes, sir.

Q. So that it doesn't take into account any aisle space or waste space?

A. No.

Q. And if you apply the Edwards formula you have to add 40 per cent to cover aisle and waste space?

A. Yes, sir. And in that connection I would like to answer the question on which we adjourned yesterday to the effect that on Sheet 2 of Schedule E, Column (m), has that additional amount put in a second time. I shouldn't say "a second time", but it has been increased on account of the 60 per cent factor.

Q. Well now, will you turn to Schedule B, Sheet 1, Line 9? There you have the total carrying charges in Column (c) of $141,393.44 and you go over to the Column (h), wharf [fol. 1733] demurrage column, and you find the amount of $19,173.05. That represents, does it, the amount of carrying charges that are assigned to wharf demurrage?

A. Yes, sir.

Q. That figure $19,173.05 is 20 per cent of the total figure in column (c), is that correct?

A. Yes, sir.

Q. What is the reason for assigning 20 per cent of the carrying charges to wharf demurrage while you only charged 10 per cent of the space to wharf demurrage, as shown at line 91 of Schedule B, Sheet 3?

Mr. Townsend: Pardon me, just a moment, Mr. Scoll. I don't think that is 20 per cent. That doesn't figure out right.

Mr. Scoll: We can correct that very easily enough.

By Mr. Scoll:

Q. If you compare the figures in line 4 of Sheet 1 of Schedule B you will find that the amount of $19,148.05, under wharf demurrage, column (h), is 20 per cent of $95,740.23 in column (c), the total expenses.

A. That comes from 20 per cent of the figure of $95,740.23.

Q. Yes, I know that. What I asked you was the explanation for the difference in treatment? You have treated [fol. 1734] your carrying charges as 20 per cent charged to wharf demurrage and when you come to assigning the charging of space you charge only 10 per cent.

A. Because that was what was actually used. Now, it may be that that complicates the computation, but that is what we actually did.

Q. Did you finish your answer, Colonel Allin?

A. Yes, sir. In other words, we followed the rules in this distribution in Schedule B, but when we got over here into Schedule E, we actually put down the exact percentage of floor area used.

Q. Yes. But if you are only using 10 per cent of the space how can you allocate 20 per cent of the carrying charges?

A. Well, Dr. Edwards said to put it down. That is all I know about it.

Q. In other words, Colonel Allin, what you have done is depart from the formula?

A. That's correct, on Schedule E.

Q. Yes.

A. To the extent of putting down the exact floor space used.

Q. Well, if you follow the Edwards formula on Schedule B and allocate 20 per cent of your carrying charges to wharf demurrage, I can't see why you have to depart from the [fol. 1735] formula when you get to Schedule E and charge only 10 per cent, or Schedule B, Sheet 3, and charge only 10 per cent of your space to wharf demurrage. It seems to me that you have been inconsistent there.

A. I expect we have been. I might say that we have endeavored to fill out these figures. Of course, it is a little difficult to do unless we are in consultation with someone who is familiar with it. But in presenting these figures I would like to make a statement regarding our feeling on this matter as a matter of policy.

Q. Go ahead. Is it a long statement?

A. No, not very long.

We wish to say that this procedure is establishing a precedent and our feeling is that every effort should be made to base any order of the Commission on sound principles which may be more or less universally acceptable and not be based primarily upon certain traffic customs which apply in a small area, such as San Francisco Bay. Furthermore, it is our feeling in approaching the regulation charges of wharves in an effort to stabilize these charges every effort should be made to remove inequalities and, in so far as possible, place all the wharves on the same basis. The Edwards formula has been carefully worked out and is a thorough and conscientious effort to arrive at certain results but it appears to desire those results to conform to [fol. 1736] local practice rather than to approach the situation from what may eventually become a matter of national policy.

It is our feeling that a wharf is an instrument designed to both the service of land and water carriers and we are unable to subscribe to the theory as outlined in this report, that the cost of the wharf terminal should be borne 50 per cent by the water carrier and 50 per cent by the cargo and absolutely nothing by the land carrier. The wharf terminal is of just as much use to the rail or truck industry as it is to the water carrier, and the need of a transit shed is solely due to the difference of the size of the carrier units as between a railroad car and a steamship. As a matter of fact, the railroads recognize this and in many of the older ports, particularly in the east, the railroads have provided and operate large wharf terminals on which they make little or no charges for transit freight moving between their own rail lines and the steamships. In some cases nominal charges are made by the railroads owning the terminal, but in general they have conceded that they are a necessary adjunct to their business and they have furnished the facilities. For this reason we wish to protest against any order being made applicable locally which will not take into consideration the discrimination which will be effected if water carriers and shippers divide the expense of a terminal and the land carriers, such as rail and trucks are assessed nothing. [fol. 1737] Furthermore, the matter is already complicated locally by the fact that the rail carriers are already paying Howard Terminal, Encinal Terminals and the Port

of Oakland ten cents per ton on rail traffic handled over these terminals, which payment they decline to make elsewhere. It is true that this payment is predicated on certain service being performed, such as checking the cargo, but this service, of course, is necessary in any event and would not require any payment by the railroads and, as a matter of fact, the identical service is performed by the Port of Stockton, but the payment is denied at Stockton. As far as we can determine, this——

Mr. Geary: (Interrupting) Let me break into your statement. You don't anticipate that this Commission can do anything with respect to the railroad companies to correct that situation, do you?

Mr. Townsend: Just a moment. I think we are entitled to have the Colonel state his views about this formula, and it takes into consideration everything and I think he ought to be permitted to go ahead and complete it. You can cross examine him.

Examiner Basham: Off the record.

(Remarks outside the record.)

Examiner Basham: Go ahead, Colonel Allin.

[fol. 1738] A. (Continuing:) As far as we can determine, this payment by the railroads is simply a contribution to the cost of operating the terminal the same as is paid by a steamer under the heading of "Dockage". The matter is further complicated locally by the fact that southern California ports are already assessing a similar charge of ten cents against the truck carriers but have not put it into effect as yet against the rail lines.

Furthermore, the San Francisco Bay ports have all been in favor of putting this charge in against the railroads, and if desired to put this charge into effect against trucks——

Mr. Townsend: (Interrupting:) I think you mis-stated yourself.

The Witness: Yes. The San Francisco Bay ports have been in favor of putting this charge in against the railroads and desired to put it into effect on July 1st. We objected and still object to this charge being made against the trucks unless it is made likewise against the rails in

order that all carriers using the terminal may pay a proper expense of operating the terminal.

It is true that the matter of exacting a charge against the rails is somewhat complicated by ownership and operating agreements, but the mere fact that there is a complication there does not seem justification for ignoring this basic factor in the setting up of charges for the use of a terminal. [fol. 1739] All of these factors, we believe, should be cleared up definitely and finally or taken into consideration and allowed for when any study is accepted by the United States Maritime Commission as a basis for fixing rates to be charged by the terminals in this area. It has been argued at times that in the final analysis the entire cost is borne by the cargo——

Examiner Basham: (Interrupting:) Colonel Allin, I think it would be better to put that in the brief. I don't think we are developing any facts now. It sounds purely argumentative to me.

The Witness: Simply, Mr. Examiner, the fact that certain of these charges are paid for by the rails at certain terminals and in setting up this formula it is our feeling that the entire situation should be studied by the Commission, including both the trucks and the rails. And for that reason we feel that this study to that extent is incomplete.

By Mr. Scoll:

Q. Well, undoubtedly you will make your argument—you will complete your statement when you come to filing a brief, I presume, Colonel Allin?

A. Undoubtedly, yes.

Q. Going back to Schedule F for a minute again, Schedule E, Sheet 1, Line 32, Column (o), which is the last column, [fol. 1740] the amount shown there is .0165. I take it that that rent represents 33⅓ per cent of the variable overheads assigned to wharf demurrage instead of 50 per cent as the formula provides, is that correct?

A. Just a minute.

Q. In other words, that is 33⅓ per cent of the 50 per cent?

A. Yes, that is correct.

Q. Which the formula allocates?

A. Yes, sir.

Q. Have you explained why you have used the smaller figure? In other words, you have used the figure which is ⅓ of that which the Edwards formula provides for?

A. Well, the intention of that was to base it on the four months' use being, in effect, a twelve months' use.

Q. Well, now, I understand the substance of your testimony concerning this seasonal aspect of the operation. The bulk of your storage is during the four months, as you say.

A. Yes.

Q. Well now, you do have storage at other times of the year, don't you?

A. Oh, very little; very little. We do not encourage the storage on our transit sheds. We don't believe it belongs there.

Q. Well, now, but you actually receive cargo at those [fol. 1741] sheds through the year, don't you?

A. Oh, yes; continually.

Q. Turn over to Sheet 2 of Schedule E. Line 43 shows 6,175 tons of cargo received on wharf demurrage.

A. Yes.

Q. Did you make any test check to find when during the year which you used that cargo was received?

A. Yes, that was checked. I don't have the exact dates that the cargo was there, but that was checked.

Q. You don't recall off-hand whether you made a monthly check to find out how much you had on storage in January and how much in February and so on through the year?

A. It was done more, I would say, from the standpoint of the accounts. In other words, the blocks of storage and checking to see what months they were there, because this wharf demurrage was not spread among a tremendously large number of shippers.

Q. Can you tell me from your notes then just how that figure of 6,175 was made up?

A. I don't think I can tell you the exact date.

Q. How was it made up?

A. It was made up of a number of different shippers. We don't have the dates here.

Q. Well, what records did you use to make that up with?

A. The records of the storage accounts or the wharf-de- [fol. 1742] murrage accounts. I will explain: They were the accounts of certain shippers and we go right to those

shippers and check those records and determine how long those goods were on our wharf.

Q. And while you were checking it over and determining what period of a year the cargo was on, didn't you check off to find out how much during these periods you were checking?

A. We studied the whole thing. We listed the commodities and we found that it was—that four months was a reasonable figure for the length of time that these goods were there.

Q. Let us take line 44, total ton-months of storage, 24,700. How is that worked out?

A. Simply by multiplying the four months by the tons.

Q. What you really did was to take four months as the arbitrary period in which you figured most of your storage occurred, didn't you, and just apply that throughout the formula?

A. Well, in this particular case, yes. But we multiplied —we used four months in changing that figure for the simple reason that four months was what we found to be the average length of storage of those tons of freight.

Mr. Townsend: In other words, Colonel Allin, the reason for that was that after the examination of your records you concluded that you would have to get back your wharf de- [fol. 1743] murrage cost over a period of four months instead of spread out over a period of a year?

The Witness: Yes.

Mr. Graham: He said an average four months. An average four months.

The Witness: No. You see, these accounts are not all withdrawn at once.

Mr. Graham: That is right.

The Witness: So that you strike an average of four months.

Mr. Graham: That is what I meant. That, of course, is a whole lot different than four months. You might have some accounts that will run two months, you might have some accounts that will run six months, and you might have some accounts that will run one month and another that might run eight months.

The Witness: But four months is the average figure.

Mr. Graham: You might have an account that would run one month and another account that would run eight months?

The Witness: That is possible.

By Mr. Scoll:

Q. So that that storage is actually spread over the year, isn't it, bunched in four months of the year, the same four [fol. 1744] months?

A. It is not confined to four months but from a practical standpoint it is.

Q. Keeping one finger on Schedule E for a moment, that figure of 6,175 tons, will you turn over to the summary schedule, line 12? Your total annual revenues in column (e) is shown as $15,935.80. Your total tons, as we have seen, were 6,175. That means that the average revenue ton was about $2.50 for the year; and taking column (e), $34,441.72, divide that by 6,175, and it gives an average cost per ton of $5.75 approximately. Is that the approximately correct relationship between your revenues and expenses per ton, $2.50 a ton revenue and $5.75 a ton expenses for storage?

A. In other words, do you mean that does it cost us approximately twice what we get for it?

Q. No—yes. And do you also take in $2.50 and pay out $5.75?

A. Well, we think it is too low. Just how much it should be raised—we don't think it is dependent on this calculation because this calculation comes from the formula. It is our feeling that it should be a penalty against storage that is placed on the wharf.

Q. Yes.

A. But not necessarily based on our costs alone.

Q. But $2.50 represents your revenue and $5.75 repre- [fol. 1745] sents your cost per ton?

A. That's——

Mr. Townsend: (Interrupting:) Based on this formula.

A. (Continuing:) That is the way it would come out based on Dr. Edwards' formula.

By Mr. Scoll:

Q. As you have applied it?

A. Yes, sir; as we have applied it.

Q. When you say you think the charge should be a penalty charge you mean it should be something in excess of the costs as shown in this schedule as you filled it out?

A. I don't say that this schedule is correct. In fact, we think it is not correct for the reasons aforementioned, but we feel there should be a penalty sufficient to discourage storage in the transit sheds because we feel that the transit shed should be used for the transfer of transit freight from the land carrier to the water carrier and not for storage.

Q. Will you turn to line 46 of Sheet 2, Schedule E, the average cost of high-piling being shown as .1843 per ton on 4,225 tons. Will you explain what test you used to develop the number of tons high-piled, 4,225?

A. Well, we just followed the rule here.

Q. Did you actually have records of the number of tons [fol. 1746] that were high-piled?

A. Yes, from actual records.

Mr. Graham: You didn't follow the rule, then?

The Witness: No, we did not follow the rule.

By Mr. Scoll:

Q. Do you use hand or machine labor in high-piling, Colonel Allin?

A. Machine labor.

Q. What was the method that you used to arrive at the high-piling cost of .1843?

A. From our records of our high-piling. High-piling is all covered by work orders. It is just a case of adding them together.

Q. Don't you actually use a lot of hand labor as well as machine labor in high-piling?

The Witness: How is that?

Mr. Scoll: Will you repeat it to him?

(The question referred to was read by the reporter.)

A. Yes, we do.

Mr. Scoll: Thank you. That is all.

Cross-examination.

By Mr. Geary:

Q. Colonel Allin, just referring to that last series of questions that were asked of you by Mr. Scoll, I wonder if you

would give for the record an explanation of a typical opera-
[fol. 1747] tion that is conducted on the Stockton Terminal where high-piling is involved?

A. Well, the goods; we will say, for example, would come in by truck and they would be unloaded and the lumpers who work with the trucks would do the high-piling.

Q. In other words, it is a continuous operation right from the bed of the truck up into the high pile?

A. In that case, and the high-piling portion of the cost would be borne by the Port. And then on the breaking-down, similarly, it would apply with the stevedore costs being borne by the Port.

Q. This figure of 18 cents per ton as the average cost of high-piling, as appears on Schedule E, Sheet 2, covers both high-piling and breaking down?

A. Yes.

Q. And have you ever had any occasion to check the actual cost of the operation which would be conducted aside from this method you have just described where the goods are high-piled direct from the bed of the truck?

A. No, we haven't.

Q. Have you had any occasion to check the difference between the cost of high-piling inbound as compared with outbound?

A. No. Our movement is practically confined to outbound.

Q. Outbound?

[fol. 1748] A. Yes, sir.

Q. With respect to the demurrage charge itself, what is your position with respect to that? On what basis do you think that it should be prescribed by the Maritime Commission?

Mr. Scoll: He has already said that, Mr. Geary.

Mr. Geary: I don't believe he has. If I may get it in a figure of so many cents per ton for a certain period and for how long a period and then what follows before that cargo moves into storage, I want it.

Mr. Townsend: I object to that as argumentative. I think that is something for the brief again.

Mr. Graham: He can ask him what he thinks the rate should be.

Mr. Townsend: I think that is a matter for the brief.

Examiner Basham: Off the record, please.

(Remarks outside the record.)

Examiner Basham: Go ahead and answer the question. Read the question to him.

(The question referred to was read by the reporter.)

A. I have never arrived at any conclusion as to the volume. I think it should be merely the principle on which I think it should be based.

By Mr. Geary:

[fol. 1749] Q. Have you reached any conclusion as to whether you think it ought to be on a period basis or on a day basis?

A. No.

Q. You have no views one way or the other on that particular subject?

A. No.

Q. Has your experience at Stockton indicated what would be the result of cargo in storage or on wharf demurrage if a period basis were used in comparison with a per diem basis?

A. Well, the thing is quite complicated, Mr. Geary, and I don't think I could answer that. There are so many competitive factors that enter into it that make it rather difficult to analyze.

Q. Well, let me put it this way: Entirely aside from the competition, if you have the opportunity of acting as a free agent, competition being eliminated, would you be in favor of demurrage on a period basis or on a per diem basis?

A. I wouldn't be in favor of demurrage at all on the wharf.

Q. You would not?

A. No. The wharf is designed to handle transit freight.

Q. In other words, you would figure that the charge after the expiration of the free time should be such as to im-[fol. 1750] mediately remove that cargo off the dock?

A. To encourage its removal, yes.

Mr. Graham: Then you would put it in that back warehouse A?

The Witness: Or uptown in some other warehouse, yes, or let somebody else put it there.

Mr. Geary: That is all.

By Mr. Graham:

Q. Colonel Allin, some of these questions may have been asked before, but I just want to get it straight in my own mind. As I understand your testimony, with respect to the time that the cargo remains on wharf demurrage it is an average of four months a year, but the fact is that during every month of the year you have some cargo on your facilities, either under wharf demurrage or storage?

A. That may be technically correct, Mr. Graham, but from a practical standpoint——

Q. (Interrupting:) There isn't anything "technical" about this at all. Do you or do you not have cargo during every month of the year on your facilities carried under wharf demurrage or storage?

A. Well, then, I can't answer you, then, because I don't know. I would have to check our records to tell you whether every moment of the year there is freight there.

Q. In other words, you can't tell me that every month of [fol. 1751] the year you have some cargo, irrespective of what it is?

A. On wharf demurrage?

Q. Yes. I don't care about the amount.

A. Well, it is probably a safe answer to say that we may have a very small amount.

Q. That is all I want.

A. But I should say, again, that our demurrage is confined to outbound cargo, which is largely seasonal.

Q. That is right. This report, as I understand you, was made up on the basis of a four months operation?

A. Just in so far as certain figures were concerned, which have been mentioned. Otherwise we followed the rules.

Q. Among other things on which you have made up this report based upon a four months period are those covered by Schedule E, Sheet 1, General and Administrative Expenses. I think you testified to that already.

Mr. Townsend: Which column are you talking about?

Mr. Graham: Well, all of them.

Mr. Townsend: What do you mean? I don't think your question is clear.

By Mr. Graham:

Q. Colonel, did you get my question?

A. Yes.

Q. That is a fact, is it not?

A. Yes.

[fol. 1752] Q. How about traffic expenses right above? Have you used the same four months formula for that?

A. No. Those are not based on the four months.

Mr. Townsend: May I try to clear up a point?

Mr. Graham: I am not having any difficulty.

Mr. Townsend: Yes, you are.

Mr. Graham: I think we understand each other thoroughly. I would like to be able to continue my cross examination.

Mr. Townsend: All right. Go ahead and get it all balled up!

Examiner Basham: Go ahead.

By Mr. Graham:

Q. Go up a little further on the same page as to the dock operation, are the figures which you used in this report on dock operation also based on a four months period?

Mr. Townsend: I object to that question unless he specifies what figures, which column he is talking to. Now, there are many columns of figures under "Dock operation", and let us have your question pinned down to a specific column.

Mr. Graham: That will be very easy. We will be here all night if you want to do it that way.

Mr. Townsend: All right.

A. May I say that the figures in column (c) are annual [fol. 1753] figures, and if you are wishing to inquire regarding column (o) they have all been increased on the basis of the four months ratio that we previously mentioned.

By Mr. Graham:

Q. They have all been reduced?

Mr. Burgin: Increased.

A. Increased.

By Mr. Graham:

Q. All right. In other words, when you get down to column (o) the figures for dock operation and general and ad-

ministrative expenses are all calculated on a four-months period?

A. That is correct.

Q. And general and administrative goes over to the second page of the same schedule?

A. Yes.

Q. That is right?

A. Yes, it is all the same.

Q. I think you testified also that you made up this report having in mind only the interstate commerce as distinguished from intrastate commerce and not having in mind all of the traffic that moves over the facility?

A. This covers all the traffic over our wharves with the exception of pipeline movements, which would have simply complicated the study. All of the cargo which moved over those wharves was interstate commerce.

[fol. 1754] Q. You have merely excluded pipeline tonnage?

A. That's correct.

Q. And there has been no other tonnage, then, excluded from this report which moved over your facility?

A. None.

Q. And, as I understand it, this report does not cover any facilities except the transit sheds?

A. That's all.

Mr. Graham: I think that is all.

By Mr. Read:

Q. Colonel Allin, I understand that you have expanded these figures by a multiplication of four upon the theory that four months constitutes the season of storage?

A. By three.

Q. Four.

A. We multiplied by three.

Q. And the reason that you have assigned a full year's allotment of the charges there is because that particular area is not used for any other purpose?

A. Yes. In other words, our movement largely being outbound is seasonal, and if those goods take up that much of the transit shed during our peak business it simply defeats the use of the transit shed for the entire year to that extent.

Q. If goods only remain on the transit shed four months [fol. 1755] and they are then removed how does it deprive

you of the use of the transit shed for the other eight months?

A. Because we don't have any other use to put it to. In other words, it may be possibly true that there are certain Bay terminals who have a large movement of inbound business coming in and it is distributed from your wharves over the entire year. We don't have that and our business is outbound, food products from the interior valleys and unless we can make use of our wharf at this particular time we don't get any use of it at all for the purpose for which it was built.

Q. I thought you testified previously that you didn't permit any storage on your transit sheds?

A. Well, we do. We discourage it. We do. We have to on account of competitive conditions.

Q. Is the storage in the transit shed, or is it in Shed A?

A. We have wharf demurrage in our transit sheds to the extent of the figure which is shown in here: 6,175 tons. That was there an average length of four months.

Q. Four months?

A. Yes.

Q. And then for another average of eight months the space was unoccupied?

A. That's it.

Q. How about this Shed A? Is that used for demurrage [fol. 1756] cargo also?

A. Shed A—Shed A is used for cargo which comes in there ex-steamer and which the owner desires stored, small lots.

Q. Is that handled from the ship's tackle right into the Shed A?

A. No, it is not.

Q. It is placed at rest in the transit shed first?

A. Yes.

Q. And thence removed to Shed A?

A. That is correct.

Q. And that service is performed by whom?

A. Oh, by the owner of the goods, or by ourselves, as the case might be.

Q. When you perform it do you make a charge?

A. We make a charge.

Q. Referring again to the last page of Exhibit 137, where you show at line 45, 4,225 tons high-piled, did that consti-

tute the entire weight of all the goods or was it just the weight of the goods that were actually high-piled?

A. Just the goods that were actually high-piled.

Q. In other words, it did not apply from the floor to the top of the pile?

A. No.

Mr. Read: That is all.

By Mr. Geary:

[fol. 1757] Q. Was that 4,225 tons actually high-piled in the transit shed?

A. Oh, yes.

Q. And not in Warehouse A?

A. This entire report covers the transit sheds.

Mr. Geary: That is all.

Examiner Basham: Any further questions of Colonel Allin? He wants to get away as soon as possible. (No response.)

You are excused, Colonel Allin.

(Witness excused.)

Examiner Basham: We will adjourn now until two o'clock.

(Whereupon, at 12:35 p. m. a recess was taken until 2:00 p. m.)

[fol. 1758] Afternoon Session

2:00 p. m.

Examiner Basham: Come to order, please.

Mr. Scoll: Mr. Examiner, I have received a document entitled "Tariff Charges, Board of Harbor Commissioners, State of California, for San Francisco Harbor, No. 2, Amended to October 9, 1940". I offer this as a supplement to Exhibit 64, the original tariff, and suggest that it be numbered "64-A".

Examiner Basham: It will be so received.

(The Tariff referred to was marked "Commission's Exhibit No. 64-A", and received in evidence.)

Mr. Scoll: I also have a document entitled "Encinal Terminals' Tariff No. 1," which is a re-issue of No. 1,

brought down to date, which I offer as a supplement to the original tariff introduced as Exhibit 72 and suggest that it be numbered "72-A".

Examiner Basham: It will be so received.

(The Tariff referred to was marked "Commission's Exhibit No. 72-A", and received in evidence.)

Mr. Scoll: I also have re-issue of the Port of Oakland Tariff No. 1, bringing the Port of Oakland Tariff down to date, which is a supplement to original Exhibit No. 71, and I suggest that it be marked number "71-A".

[fol. 1759] Examiner Basham: Received.

(The Tariff referred to was marked "Commission's Exhibit 71-A", and received in evidence.)

Mr. Scoll: Let the record also show, Mr. Examiner, that I have received corrected pages to bring the Parr-Richmond Terminal Corporation Tariff No. 2 down to date. Parr-Richmond Tariff is now in the record as Exhibit 77, and these corrected pages will be inserted in the original tariff. That leaves yet to be received tariffs from Stockton and Howard to bring their tariffs down to date.

Mr. Graham: We will bring ours in the morning.

Examiner Basham: Off the record.

(Remarks outside the record.)

Examiner Basham: On the record.

Mr. Scoll: Counsel for Howard and Stockton have advised me that pages to bring their tariffs down to date will be furnished for the record, and I suggest that, Mr. Examiner, you consent to having those tariffs or supplemental pages inserted in the record after the close of the hearing, and that they be incorporated in the record with the same number as the other exhibit.

Now, let us see what that is for Howard Terminal. Howard Terminal Tariffs are in the record now as Exhibits [fol. 1760] 74, 75 and 76. So the amendatory tariffs or pages will be inserted as a supplement to those exhibits, and the Port of Stockton is now Exhibit No. 69. I presume the supplements should be inserted as supplements to Exhibit 69.

Mr. Ventre, please.

JOHN P. VENTRE resumed the stand and testified further as follows:

Direct examination.

By Mr. Scoll:

Q. You have been previously sworn, Mr. Ventre?

A. I have.

Q. Have you a copy of Exhibit No. 130 in front of you? That is the determination of wharf demurrage cost of Howard Terminal based on the Edwards formula?

A. I have.

Q. That was prepared by the Howard Terminal, was it not?

A. It was.

Q. From the records, books and documents of the Howard Terminal?

A. That's right.

Q. In preparing that did you follow the Edwards formula throughout, making the same allocations and assignments that are made in the Edwards formula?

A. We used the same basis throughout that is used in either actual or the percentages that were given to us by Dr. Edwards' work sheets with one exception, and that [fol. 1761] was with relation to tractors, trailers and piling machines and the skids used in high-piling.

Q. Where is that item on the formula, Exhibit 130?

A. It will be a scattered figure. It is taken into consideration in depreciation, in maintenance and equipment.

Q. That appears on Schedule B, Sheet 2, does it not?

A. It does; yes, sir, although it can't be identified as any one particular figure. If I explain the change that we made it will probably give you the answer.

Q. Do so, please.

A. Dr. Edwards in his study allocated 10 per cent of the tractors, trailers and piling machines to high-piling. We allocated 25 per cent. And on the skids which are used in high-piling he allocated 25 per cent and we increased that to 50 per cent. That was due to a difference in our methods of handling whereby at the time the study was made by Dr. Edwards we only had one piling machine. Now we have three, and a good deal of the canned goods were high piled

by hand whereas now we pile practically no canned goods by hand. We use machines entirely.

Q. So that those adjustments upward are based on increased use of machinery?

A. Increased use, that's right. There is one other correction I guess I should mention, and that is our labor cost [fol. 1762] is based on the actual cost for the period November 1, 1938 to October 31, 1939, and it was then adjusted upward to take into consideration the increases granted warehouse labor in October, 1939.

Q. The year's operations which you used in compiling Exhibit 130 were from November 1, 1938 to October 1, 1939, is that correct?

A. To October 31st.

Q. Why did you use that basis?

A. Well, at the time of the adjourned hearing here we understood that that would be the desirable period to study inasmuch as that was one complete year of business without interference from strikes and closing of the plant. The last two months of '39 we were closed by strike and we couldn't give a complete year.

Q. Mr. Ventre, will you turn to sheet 3 of Schedule B?

A. Yes, sir.

Q. Line 91 under column (h), wharf demurrage, you have 55,322 feet. In the summary of the information contained in Exhibit 130, which was introduced in the record as Exhibit 131, the space used is indicated as 59,986 feet. How are those two figures to be reconciled?

A. The 55,322 feet is the space of the sheds which are used for the wharf demurrage cargo. To that we added 664 feet to cover space occupied by office and machine shops, [fol. 1763] etc., for the proportion as allotted by Dr. Edwards, which is around 8 per cent.

Q. Will you turn now to sheet 2 of Schedule E, column (m)?

A. Yes, sir.

Q. Do you have that?

A. Yes, sir.

Q. In column (m) the adjusted space cost per square foot for 30 days is shown as .0319 cents. Do you find that?

A. Yes, sir.

Q. According to the testimony of Mr. Differding at the earlier hearing the California Railroad Commission in-

vestigators, himself, Mr. Differding, and Dr. Edwards found that your space costs were .0355 cents per square foot. How do you explain the fact that your space costs have gone down since 1935?

A. Well, the only explanation I can give to that is at the time of Dr. Edwards' study there was different units being used for the bulk of our demurrage than those that we are using at the present. The particular unit that I consider the largest difference in was one of the units on the north part of the property where there are narrow buildings and brick construction which had a high cost of construction compared to the buildings we are now using.

Q. Will you identify the buildings which you are now using which you did not use in 1935 for wharf storage or [fol. 1764] demurrage?

A. I can't identify exactly the ones that were taken into consideration in 1935 because I don't happen to have that record here.

Mr. Scoll: Let the record show that the witness now has before him the work sheets that Dr. Edwards used and Mr. Differding, which work sheets they used in preparing their report for the California Railroad Commission.

The Witness: Particularly in Dr. Edwards' work sheet he shows buildings 3-A and -B, which in the exhibit that now stands in this record as Exhibit 105 is designated as 6-D and 6-C. Those two units are not now used in any way in connection with wharf demurrage and they are used entirely in the public warehouse business.

By Mr. Scoll:

Q. Those are higher priced units, are they?

A. They are the highest two cost units we have with the exception of 6-A and -B, which are not being used for wharf demurrage.

Q. Those two units that you say are no longer used for wharf demurrage, isn't it true that they might still be used for overflow cargo on storage?

A. Well, the warehouse section at the present time is so occupied that it is not possible at this time. It might be possible that some day that may change, although we [fol. 1765] don't anticipate it because the location of the

building lends itself more properly to the warehouse business.

Mr. Scoll: No further questions.

Cross-examination.

By Mr. Geary:

Q. What building did you use, Mr. Ventre, to get the figure of .0319 in Schedule E?

A. That comprises several units.

By Mr. Graham:

Q. Are those the units, Mr. Ventre, that you testified in the previous hearing were used for this purpose?

A. I don't believe we testified at that time as to what units were being used. We are using a portion of Unit 1-A, 1-E, 5-C, 5-D in its entirety, and a portion of 6-E.

By Mr. Townsend:

Q. Whre is 1-E?

A. 1-E is in that unshaded portion adjoining 1-A.

Examiner Basham: Any further questions?

Mr. Geary: Yes, I have, Mr. Examiner, please.

By Mr. Geary:

Q. The figure on the summary schedule, Mr. Ventre, for high-piling cost of .3725, is that the figure representative of your experience in piling canned goods by machine?

A. No, it is not. That's a figure covering the average cost of piling all commodities which were high piled on [fol. 1766] either inbound or outbound movement and regardless of density or size.

Q. It represents an average figure?

A. That's correct.

Q. Would you say that your experience on the cost of high-piling inbound was different from the cost of high-piling cargo outbound?

A. My estimate of that would be that it costs from two to three times as much to pile inbound cargo as it does outbound, and particularly canned goods. I would say that our cost of piling canned goods would be in the neighborhood of 10 to 15 cents.

Q. And what is the explanation of the difference between the cost of the piling in one direction in comparison with piling in the opposite direction; that is, of the movement in the opposite direction?

A. Well, there are two outstanding differences. One of them is, when outbound cargo is delivered to the dock it is either delivered for a specific vessel or to be held for an indefinite time, which would tell you that it is for storage. And with that knowledge you have the opportunity of placing the cargo most convenient to the point where you want to pile it. And on the inbound cargo, which in the Bay area here, as far as we are concerned—rather, outbound cargo I meant to say—in the Bay area is mostly canned goods. When it is delivered by tracks it is placed [fol. 1767] on skids, as we term them, and then we use our lift machines to place them into the pile for high-piling or for lower floor. Similarly in the case of car, when it is received at the terminal by car in the car unloading operation we place it on skids and then use lift machines to high-pile it. When the car is delivered to the ship we simply take the lift machine and move the skids on to the floor, which gives it floor height, and the stevedores take it from that position.

On inbound cargo, when it comes from the vessel it is not always certain whether it is going to extend beyond the free time or not and the stevedores will only place in certain locations. They will not put it on skids, which means that you must hand pile it on to skids. And similarly, when it goes out by truck you lift it down on the skids. But on inbound cargo you must necessarily use hand labor for part of your service regardless of whether you use machines for piling it or not.

Q. You heard the testimony of Colonel Allin this morning with respect to the high-piling operation that is conducted in Stockton?

A. I did, yes.

Q. Have you any operation of that character that is available to you at your facility in Oakland where the goods [fol. 1768] are moved from the bed of the truck directly into the high pile?

A. We have never had occasion to handle it that way, and the Union regulations are that the lumpers cannot do

high-piling. We have to hire warehousemen to do high-piling.

Q. In other words, the Union regulations which affect the San Francisco Bay area would prohibit that sort of an operation down here so far as your experience goes?

A. That's right.

Q. And the net result of the situation is that it has to be taken off the bed of the truck and then by the teamsters and then entirely and completely handled by a different group of men?

A. Except that in taking it off of the truck they will put it on the skids where you want it for high-piling.

Q. But they will not put it in the high pile at all?

A. They will not put it in the high pile at all, no.

Q. That is, I mean by "they", neither the teamster nor the lumpers?

A. We have to hire the warehousemen if we want to perform that service.

Mr. Geary: That is all.

By Mr. Townsend:

Q. Mr. Ventre, referring to your Exhibit 105, you stated that you used in computing your Exhibit 130 a portion of [fol. 1769] your Unit 1-A. What portion did you use?

A. 25 per cent.

Q. 25 per cent. And why did you use only 25 per cent?

A. That was all that was required for the amount of tonnage that we had.

Q. You mean 25 per cent was the maximum amount of space that you used for wharf demurrage cargo in that area?

A. That's right.

Q. What is the square footage in the aggregate of Unit 1-A?

A. I don't think I can answer you that, but I can tell you what the 25 per cent is and you can figure it out.

Q. That is all right.

A. 25 per cent is 8,123 feet.

Q. Did you use all of your Unit 1-E or just part?

A. All of it.

Q. And what is the square footage there?

A. 4,892 feet.

Q. 4,892. And that is the part that is not dark red or as light red on your Exhibit 5, but adjoins Unit 1-D and Unit 1-A?

A. That's correct.

Q. Did you use all of Unit 5-C?

A. 50 per cent.

Q. And what is the area of the 50 per cent?

[fol. 1770] A. 50 per cent was 10,600.

Q. 10,600?

A. That's right.

Q. You say you used all of Unit 5-E. What was the area of that?

A. 21,135.

Q. And what part of Unit 6-E did you use?

A. 60 per cent.

Q. What was the area of the 60 per cent?

A. 10,572.

Q. Now, do I understand that those were the only areas that were used for wharf demurrage or wharf storage cargo during the period covered by your study?

A. To the best of our knowledge, yes.

Q. And what period were you taking into consideration in that connection?

Mr. Graham: I think he has already testified to that. It was the twelve-month period.

A. November 1, 1938 to October 31, 1939.

By Mr. Townsend:

Q. And you used that for all purposes in this study?

A. That's right.

Mr. Townsend: Mr. Examiner, when the Port of Stockton representatives were requested by Mr. Scoll to develop certain information pursuant to the Edwards cost formula [fol. 1771] we were requested to fill out in the formula Schedule A to the extent that any items were allocated to Column (h), and we were also requested to fill out Column (c) of Schedule E. I notice that Encinal Terminals has similarly filled in the columns of this Exhibit, and I request that Howard Terminal submit the same information for the record. I believe it is only fair that the same information be submitted by all of the terminals and it is my

understanding that it is necessary to develop that information before the remainder of the formula can be filled in. Therefore, I wonder if we couldn't have that information made available and filled in to the formula for the Howard formula?

Mr. Scoll: I think Mr. Townsend's request is correct and reasonable. I think the information should be the same from all the terminals filled out in the Edwards report.

Mr. Graham: I might say that there was no intention of omission to fill in this. There was no understanding that we were to fill it in. I think we can get the information and supply it to you. We don't have the data for making up Schedule A that we have in making up the rest of the exhibit. We didn't have that.

The Witness: We didn't have it at all. It would mean in our properties going over 24 different units, because each [fol. 1772] unit has a different cost and they have no relation to the rest of the demurrage.

Mr. Scoll: You had to do that to get the rest of the schedule.

The Witness: Only in so far as the percentages are involved in the respective units.

Examiner Basham: You will undertake to furnish that?

Mr. Graham: We haven't any objection to furnishing it. We can't furnish it now and we couldn't furnish it within the time in which this problem was raised the other day.

The Witness: It couldn't possibly be furnished on this formula because there were 24 different units and they have no bearing on wharf demurrage.

Mr. Graham: We can get the information assembled if you want it, but we don't think it has any bearing on the case.

Examiner Basham: Off the record.

(Remarks outside the record.)

Examiner Basham: On the record.

By Mr. Townsend:

Q. Mr. Ventre, will you please turn to Sheet 1 of Schedule B of your Exhibit No. 130, and refer particularly to——

A. (Interrupting:) Just a moment, please. Schedule B, [fol. 1773] Sheet 1?

Q. Yes.

A. Yes, sir.

Q. And refer particularly to line 4 which reads: "Shed—Unit No. 1," and in column (h) there is the figure $7931.36. Will you please explain in detail how you arrived at that figure?

A. That should not be designated as "Shed 1." That's the entire transit area that is used for the purpose of wharf demurrage.

Q. I understand that.

A. The figure was arrived at by taking the percentages of the various carrying charges allotted by Dr. Edwards and applying them on this formula.

Q. All right. I would like the detail, the underlying figures in the record.

Mr. Graham: We don't propose to submit the detail because we don't think that any other witness has been asked to submit any such information at all. We were asked to present here a compilation of figures based upon the Edwards formula for the period of time. We do not have it precisely, with one slight exception which the witness has already testified to, which was brought about by the experience in the intervening time.

I might suggest that so far of all the witnesses called [fol. 1774] my client has been the only one that has complied with the request, and I think it is ill-timed for counsel for Stockton, who admittedly hasn't complied with the request at all——

Mr. Townsend (interrupting): What do you mean we haven't complied with the request at all.

Mr. Graham: Just a moment! Let me finish.

(Continuing:) —to suggest at this time that we bring the break-down of these figures which have gone into the compilation of this data before this Commission.

I might further suggest that this witness is not competent to testify as to the break-down.

Mr. Townsend: I would like to point out, Mr. Graham, that we have produced the costs of our different facilities and have shown how we have derived the figures that I am talking about. I simply want to check back and find what was the cost of his facilities and how he has developed that figure. There is such a discrepancy between that figure and

the others of the other terminals that I want to develop why the discrepancy arises.

Mr. Graham: I don't see that the comparison between the cost figures of this terminal and any other terminal has anything to do with this case. Whether there is a discrepancy or not, you wouldn't expect they would all be the same, would you?

[fol. 1775] We don't propose to produce those figures unless the Commission instructs us to do so.

Examiner Basham: Off the record.

(Remarks outside the record.)

Examiner Basham: On the record.

The request will be denied.

By Mr. Townsend:

Q. Let me see if I can find out exactly what you did without getting any figures. Let's take Unit 1-A to start with. Now, you must have started with some cost of something there, and what cost of what did you use, not in dollars and cents but in facilities?

A. We would take the cost of the land.

Q. What land?

A. Under the shed. The shed is built on land.

Q. Just the shed. Is there anything around it?

A. No, there is nothing else around it except the adjoining shed.

Q. And tracks? You have some tracks on there, don't you?

A. Not for wharf demurrage.

Q. You didn't include anything, then, but what is right under the building itself?

A. That's right.

Q. All right. What did you do next?

A. We took the structures and the insurance and maintenance.

[fol. 1776] Q. Wait a minute. Let us stay with cost first and find our carrying charge there. You start with the cost of the land on which Unit 1-A is located, and you start with the cost of the shed. And I assume you took 25 per cent of that, is that right?

A. What Unit are we talking about?

Q. 1-A.

A. That would be correct.

Q. Then what did you take as your rate of return on that? What percentage?

A. 7 per cent.

Q. 7 per cent?

A. That is right.

Q. Now, then, did you take 25 per cent of the cost of your land and facilities and then take 20 per cent of that 25 per cent?

A. Well, I didn't do the actual extending, but I would assume he took the cost of the entire building including your various depreciations and other costs and took 25 per cent of it.

Q. But you didn't assign all of that to wharf demurrage?

A. 25 per cent of it.

Q. I don't think you did, but let me just see a little further. Did you take the entire cost of 25 per cent of the structure instead of 20 per cent of the cost of the entire [fol. 1777] structure, as Dr. Edwards did in his formula?

Mr. Graham: This witness has already testified——

A. (Interrupting:) I don't know whether Dr. Edwards did that in this formula.

Mr. Graham: This witness has already testified under oath that he complied with the Edwards formula with one exception. I have already stated for the record that this witness is not qualified to testify as to the breakdown of this compilation. He didn't compile it. It was compiled in association with the chief accountant for the company. And it seems to me that so long as this witness has testified under oath that this complies with the formula that is about the most that he can do.

The Witness: The formula percentages couldn't be the same at all terminals anyhow.

Mr. Scoll: Can we go off the record a minute?

Examiner Basham: Off the record.

(Remarks outside the record.)

Examiner Basham: On the record.

By Mr. Townsend:

Q. Mr. Ventre, will you refer again, please, to sheet 1 of Schedule B, and particularly to line 19? Will you ex-

plain how you arrive at the figure of $180.00 for superintendence of wharf demurrage in connection with dock operation?

[fol. 1778] A. That was undoubtedly off of the work sheet that we had by using the percentages. I don't know what that percentage is. We might have it on the work sheets.

Q. Do you know what allocation you made of your total annual superintendence?

A. In percentages?

Q. Yes.

A. I don't know off-hand. I would have to go back to the work sheets to get that.

Q. The percentage?

A. The percentage that we did make, though, was the same percentage as made by Dr. Edwards, because all the allotments in here are on actual use, the same percentages that Dr. Edwards used, except the two I testified to about high-piling equipment.

Q. Did you prepare this statement?

A. Personally, no.

Mr. Graham: He has already testified that he did not and I have stated it in the record six times that he did not.

Mr. Townsend: Is there someone here who can give us that information?

Mr. Graham: There is not.

Mr. Townsend: I don't see how we are getting a picture of what was done at all. I don't see that these figures are [fol. 1779] supported by anything.

Mr. Graham: I don't know as they need to be.

Mr. Townsend: They do as far as I am concerned.

Mr. Graham: We weren't required to produce the supporting documents for the compilation of the formula that we have compiled. We have done what we were asked to do.

Mr. Scoll: I think the items should be explained.

The Witness: We would have to go back to the work sheets to do that. I don't think that any of these forms sent in show the percentages that were used. I haven't seen an exhibit so far that has them.

By Mr Townsend:

Q. Turn to sheet 1, Schedule B, line 22. Somebody—I don't suppose you did it—but somebody has bracketed

apparently in ink lines 22, 23, 24, and 25, and it says "B10", and then apparently for all of those items there is a figure in column (h) of $4366.53. Will you please explain that figure?

A. That is the actual clerking cost that we allotted to wharf demurrage from the best of our ability from our accounts.

Q. Well, does it include——

A. (Interrupting:) In arriving at that a portion of it was taken by taking the total number of tons received on [fol. 1780] wharf demurrage and the total number of tons that were received at the terminal and the total checking cost of the terminal, and taking that proportion. Then to that we added men who are on the payroll entirely in the service of wharf demurrage.

Q. So that includes, then, a proportion of all the checking that you do in and out of the freight cars?

A. There would be a small proportion reflected in there somewhere.

Q. Well now, "small proportion." It's the same proportion that you include of all other clerking costs, isn't it?

A. That's right.

Q. And it would be a relationship of the total tons handled in wharf demurrage to the total tons over the dock, would it not?

A. That's right.

Q. Is it not a fact that Howard Terminal is paid by the railroads for performing the checking to and from freight cars on a large part of the traffic that moves over Howard Terminal?

Mr. Graham: Just a minute. I will object to that question upon the ground it has nothing whatsoever to do with these proceedings. This is the same tactics that Mr. Townsend and Colonel Allin attempted to perform this morning and the Examiner ruled the statement could not be fur- [fol. 1781] ther read.

Mr. Townsend: Now, Mr. Examiner,——

Mr. Geary: (Interrupting:) I join with Mr. Graham in the objection, Mr. Examiner, because it has no bearing at all in so far as the issues that we are considering in this proceeding.

Mr. Read: I join with Mr. Townsend. It does have a bearing. If the terminal is compensated once by the rail-

road or anybody else for performing this service, there is no reason why it should again be added into the cost of demurrage.

Mr. Townsend: May I make this further observation? If Howard Terminal or any other terminal is compensated by the railroads for performing this checking, and if the Port of Stockton or any other terminal is, as the record shows, not compensated for performing the same service, then we have here an element where if there is to be additional compensation received by the Howard Terminal they are getting paid twice for performing the same service, whereas the Port of Stockton is paid only once.

Mr. Geary: May I be heard on that for a moment, Mr. Examiner?

Examiner Basham: What do you want to say, Mr. Scoll?

Mr. Scoll: Mr. Townsend, that charge received for per- [fol. 1782] forming the service for the railroads covers traffic that is loaded into or out of cars and that doesn't have anything to do with this issue of wharf demurrage as it is set forth in the formula as I understand it.

Mr. Townsend: It says here "Checking account car-loading" and "Checking account car unloading." I didn't make up the formula. But, as the witness has just testified, some of that checking to and from cars is included in here as an element of expense in connection with wharf demurrage. If he has already been compensated for that by the railroads, how is he entitled to further compensation by the cargo?

Mr. Scoll: Does the witness actually know whether checking to or from cargo is included as an expense of demurrage?

The Witness: Maybe I answered a little bit fast there. In other words, I don't think it is included. It is included in the total figure that we took a percentage of. In other words, where does the checking from the car stop and where does the checking into demurrage start?

Mr. Read: Mr. Scoll, the witness testified how he arrived at the computation. It was a ratio determined by the total number of tons handled to the total number of tons on demurrage, and he simply took his entire clerking costs regardless of whether the cargo was under demurrage or not, and then took this proportion and then added thereto [fol. 1783] 100 per cent of the cost of the clerks who devote their entire time to demurrage. Consequently, it would be

impossible that this figure would not include a portion of the costs for clerking that had nothing to do at all with demurrage.

Examiner Basham: Objection overruled.

Mr. Graham: What is the question, Mr. Reporter?

(The question referred to was read by the reporter.)

A. I think that has to be broken down a lot. When you say "a large part" I think previous testimony in this particular case showed that around 15 per cent of our cargo is received by car, the balance is received by truck. As to whether or not we are compensated for the checking in and out of car, I have never made a complete study to find out what our cost was. I don't think that we are being paid for the service that we are performing for the cargo. We are being paid by the railroad for the service we are performing for them, such as making damage reports or inspecting bad cars or anything of that type, which the railroad is called upon to do themselves if we don't do it. It is a separate service entirely than that of receiving cargo only.

Mr. Scoll: Mr. Ventre, turn over to Schedule E, Sheet 1.

The Witness: Schedule E?

[fol. 1784] Mr. Scoll: That's right. Sheet 1 of Schedule E. Now, turn to column (i), line 11, "Checking account carloading." In column (i) you have nothing. Now, line 12, "Checking account car unloading" you have nothing.

Mr. Townsend: That is because he lumped them all together in Schedule B.

Mr. Scoll: Just one minute. Turn to Note 6 in Schedule E. It says there "Includes only checking costs which are jointly for the account of wharf demurrage and car loading or unloading, which have been apportioned equally to each service."

Do you actually know now whether or not you did include in your checking cost some checking for carloading or car unloading, inasmuch as you did not put anything on Schedule E?

The Witness: We couldn't separate those costs. We don't keep the costs separately on our work sheets or we don't keep it on our books or payroll. It would be impossible for us to separate those except by percentage in

regard to the total. If that is incorrect, it is impossible for us to develop t. at cost at this time.

Mr. Graham: Does that mean, Mr. Ventre, that the fact of the elimination of those two figures under column (i), Schedule E, Sheet 1, indicates that they weren't included in this report at all?

[fol. 1785] The Witness: Well, only to the extent that they might have been included in this question of percentage.

By Mr. Townsend:

Q. It is a fact, Mr. Ventre, that you took all of the car checking costs incurred on your dock on any and all traffic and allocated a percentage of that to wharf demurrage, is it not?

The Witness: Will you repeat that question?

(The question referred to was read by the reporter.)

A. We didn't have any separate cost of our car checking and unloading. The only checking cost we had was an aggregate cost of our clerks which included all checking to and from consignees. This did not include the figure—did not include any checking to and from vessel. Now, that's the only break-down we got in our accounts, is the cost of checking to and from the consignees; and whether that came in by car, truck, or otherwise we had no way of separating it except by the question of percentages in relation to the total.

Q. The percentage of all such checking to and from consignees is in your study against wharf demurrage?

A. The percentage of all such checking to and from consignees, that's right.

Mr. Scoll: Did you make any credits for the amounts which you received from carloading and unloading charges?

[fol. 1786] The Witness: Well, I don't know how you could make a credit. In other words, we took the total number of tons, added to that the tons that were in wharf demurrage and we had a set figure which covered the checking in and checking out of all the tonnage that moved through the terminal, plus that that was placed in demurrage. Now, whether it is correct or not, the only way we could figure on it was that we had to take that percentage in relation to the total.

By Mr. Townsend:

Q. Now, Mr. Ventre, I will not pursue that any further. Let us turn to another subject. You referred to the fact that you included in this study in Exhibit 130, part of your Unit 6-E, did you not?

A. Yes, sir.

Q. Is cargo handled directly by the stevedores between the vessels and Unit 6-E?

Mr. Graham: Just a minute. That has all been asked and answered in the previous hearing.

Mr. Townsend: I am entitled to go into it again.

Examiner Basham: Off the record.

(Remarks outside the record.)

Examiner Basham: On the record.

By Mr. Townsend:

[fol. 1787] Q. Let me ask another question. Have you included in your study in Exhibit 130 the cost of handling cargo between the vessel and Unit 6-E?

A. Not between the vessel, but between the place of rest as placed by the stevedores and Unit 6-E.

Q. You have included that?

A. Yes, sir.

Q. Where is that, please?

A. That will be found on Schedule E, Sheet 1, line 14.

Q. Under part (b) or part (a)?

A. Part (b), line 14.

Q. Is there any other item in there besides such transferring charges, do you know?

A. Any moving or shipping of freight in connection with wharf demurrage; yes, sir.

Mr. Graham: In any of these units?

The Witness: In any of the units.

Mr. Townsend: Just one moment, please.

Mr. Read: May I ask one question?

By Mr. Read:

Q. Mr. Ventre, at the present time do you absorb this cost that is shown at Line 13, item (b), $4247.92?

Mr. Graham: Just a minute. That has all been covered in the previous hearing.

A. It is in the cost. I don't know what you mean by [fol. 1788] "absorb".

By Mr. Read:

Q. Do you get compensated for it today?

A. On some commodities, yes; on some commodities, no. I would say that is based on the rate charged for the commodity, and if the commodity is paying its cost you are getting it. If the commodity is not paying its cost, you are not getting it.

Q. Then the man who stored it would pay the same charge whether it were left on the transit shed or put into this other unit?

A. Well, it is according to what you term as a transit shed. Regardless of where it would be left, he would pay the same charge. But we don't permit any of it to lay on the piers proper.

Q. You remove it all to this other unit?

A. That's right.

By Mr. Townsend:

Q. Mr. Ventre, did you at any place in your study, exhibit 130, and especially referring to Sheet 2, Schedule E, line 40, expand your variable costs per square foot to take care of aisle space and waste space?

A. Yes. You do that automatically in getting from column (l) into (m) That is, the figure given in column (l) is based on a hundred per cent, and when you get down [fol. 1789] to 60 per cent you get the figure in column (m).

Q. Does your figure of 55,322 square feet in line 91 of sheet 3 of Schedule B purport to include aisle space and waste space, or is it just the actual space that is used for wharf demurrage cargo?

A. It includes the aisle space and waste space.

Mr. Graham: So that in this respect you used exactly the same formula?

The Witness: That's right.

Mr. Townsend: That is all I have, with the understanding that that additional information in Schedules A and E

will be supplied along with the explanation suggested by Mr. Differding.

Mr. Graham: I might suggest that there is no understanding whatsoever in so far as the Howard Terminal is concerned with respect to supplying any information at all.

By Mr. Read:

Q. Mr. Ventre, you have some pipelines on the Howard docks, do you not?

A. Yes, we have one pipeline.

Q. Do you isolate it from any figures here which have to do with the pipeline, either in the way of revenue or expense in tons?

A. All the figures that we have been discussing have been those in connection with wharf demurrage. There is no [fol. 1790] wharf demurrage involved in the pipeline.

Q. Then for that reason have you deducted out of general costs revenue tons, and so forth, that proportion that is strictly pipeline, or do those figures include that?

A. What do you refer to as "general costs" Mr. Read?

Q. Well, there must be some cost, I presume, for the maintenance of a pipeline operation and so forth. There must be some revenue derived from the pipeline.

A. Well, that facility was there at the time Dr. Edwards made his study. The pipeline was there some 19 or 20 years and Dr. Edwards in making his study allocated certain percentages of each item of plant overhead to each service. Where a percentage was used by Dr. Edwards we have used exactly the same percentage, with the exception of that one with reference to high-piling.

Q. Then if Dr. Edwards excluded such figures your reports do; if he didn't your reports do not, is that right?

A. That would be right.

Q. Is that right?

A. Yes.

Mr. Read: Mr. Differding, can you tell us whether such an exclusion is made?

Examiner Basham: Off the record.

(Remarks outside the record.)

Examiner Basham: Back on the record, please.

[fol. 1791] By Mr. Read:

Q. You testified, I believe, Mr. Ventre, that the cost of high-piling inbound cargo was greater than that of outbound cargo?

A. That's right. I believe the cost of piling as well as the variable cost would change by the density of the particular commodity.

Q. Then it is the density that causes that difference rather than the direction of the movement?

A. No, mostly the fact that on the outbound movement the particular commodities that are stored are mostly canned goods and the conveniences of handling, which I formerly testified to, that you don't have to re-handle by hand the majority of the cargo.

Q. That comparison you make, then, is confined to the same commodity, is it, only with respect to the different direction of the movement?

A. No. If the canned goods were received inbound; for instance, if we received grapefruit or canned beans, or canned soup from the east coast, or if we were fortunate enough to receive pineapple from the Islands, stevedores would put it on the floor of the dock and then to high-pile it we would have to handle it by hand either on to skids so as to use the machines, or otherwise you would have to do the entire piling by hand, one or the other, which I would [fol. 1792] say would be probably three times as high as the present cost of the outbound cargo.

Q. All outbound cargo or outbound canned goods?

A. Well, I would say on the majority of all outbound cargo, that is, with the exception of a few items like wool and possibly beans.

Q. Will you say that difference is as marked if you compared canned goods outbound with steel plates inbound?

A. Well, there your cost of handling steel plates—that is what I say. This particular study gives us an average cost of all commodities. Now, in measuring the rate that should properly be applied you would have to make a further study of each individual commodity that moves in any quantity. In other words, the cost of high-piling steel in my estimation and from my actual knowledge would be far less than the cost that we find here on the average of 38 cents. I might add to that explanation, too, that in setting or allow-

ing any specific rates, what the traffic will bear and competition should be taken into consideration rather than an average over-all.

Examiner Basham: Any further questions?

By Mr. Read:

Q. Now, refer please to line 45, sheet 2, Schedule E, where you show 17,749 tons as having been high-piled. Is that the total tons of the cargo or does it just represent the [fol. 1793] actual amount that was high-piled?

A. That represents the total amount of cargo to the best of our judgment and records that was high-piled.

Q. That is only the cargo that was placed above the normal piling heights?

A. No. My interpretation of "high-piling" is anything that you may pile, whether it is the lower tier or upper tier, so long as it is not piled by the stevedores or teamsters. In other words, if we high pile cargo and have to put in the lower tier ourselves for the possibility of better piling, we would have to do so. Our practice at the Howard Terminal is that the entire piles, at least 99 per cent of the time, are piled by us if it is high-piled at all.

Q. Your Exhibit 131 shows the amount of space used for demurrage, and I take it it is for that entire period of November, 1938 to October, 1939?

A. To the best of our ability that is the proper application.

Q. And is there somewhere in these exhibits figures that will give us the square feet of the entire space that is used for transit operations and the ratio that this bears to that total similar to what was put in by Mr. Engel?

Mr. Graham: I think that is already in.

Mr. Read: Is it?

Mr. Graham: I think it is in connection with the ex- [fol. 1794] hibit showing the particular facilities.

A. I think it is in one of the papers in the earlier hearing, but I wouldn't say definitely.

Q. Does the record today show the total revenue from operations for this period and the ratio of this $31,263.55 from wharf demurrage to the total revenue of the Howard Terminal Company for their terminal operations?

A. Not to my knowledge.

Mr. Read: Could we have that, Mr. Graham? Similar to the figures put in by Mr. Engel, the exhibit introduced yesterday?

Mr. Graham: I don't know. I would have to talk to Mr. Howard before I would answer that question. That is not within the request of the Commission.

Mr. Read: I have here, Mr. Graham, the last annual report of the Howard Terminal Company filed with the Railroad Commission, but that is for the calendar year 1939 and, obviously, a proper comparison cannot be drawn for that period with the period that is part of '38 and part of '39.

By Mr. Read:

Q. Mr. Ventre, you can answer this question if you wish to and if your counsel wishes you to. You heard Mr. Engel's testimony today wth certain recommendations for certain commodities in which the Parr-Richmond Terminal is interested, and your counsel questioned him at length [fol. 1795]. regarding his suggestion for overcoming the abrupt increase that would occur on the sixth day under the note in the Order in Case No. 4090. If that part of Mr. Engel's objection were withdrawn so that you would have a flat per diem rate and the goods would automatically go into the storage on the sixth day in accordance with the note, would that come close to the ideas of the Howard Terminal Company?

Mr. Graham: I think, Mr. Examiner, if I may have Mr. Ventre at this time express himself on this subject not only in response to the question but on the general subject, because he has previously testified in response to questioning at the previous hearing, and since then I think he may have reached some conclusions slightly at variance with his previous testimony. I was going to ask him some questions on this. If he can cover that once we can save time.

Examiner Basham: Go ahead.

A. Well, after making a further study of the statements we heard previously in the first section of this hearing we came to the conclusion that no one had contradicted Mr. West's testimony as to the rates and practices in the north-

west. He stated that where these rates were applied in the northwest, which includes Portland, Seattle and Tacoma, that they have had the desired effect of clearing the transit space within a reasonable length of time; and, as [fol. 1796] we understand it and our belief is, that is what we are here to accomplish: Clearing strictly transit space within a reasonable length of time and at the same time not lose the revenue which we have been enjoying from cargo that we have been enjoying. And we feel that there should be two sets of rates: One based on a daily basis not to exceed the rates testified to by Mr. West; and the other on a 30-day period basis plus a receiving and a delivering charge.

In the application of those it should be necessary for the owner to declare whether he wants a daily rate or a monthly rate, as the burden should be on him as to whether he wants a daily rate which in the aggregate over a long period is going to be high or excessive, or whether he wants a storage monthly rate plus receiving.

Dr. Edwards in his study—I think I could refer to the page.

Mr. Graham: Here is the schedule. That note there (indicating) is the note.

A. (Continuing:) Dr. Edwards on page 103 of the final report stated that "On commodities occupying between six and eight square feet to the ton unpiled, such as canned goods, fertilizer and sugar, it is a matter of indifference whether or not goods are high-piled if they remain approximately 30 or 40 days. Beyond this period it is just definitely cheaper to high-pile."

[fol. 1797] I believe it should be incumbent upon the shipper to state whether he wants to take this daily rate, which after 30 or 40 days would be costing him more than the monthly rate would, or whether he wants to declare himself for the monthly rate and in so doing compensate the terminal for any piling that may be necessary to hold it for a long period.

The objection that I have to this particular note that Mr. Engel testified to is that the 5-cent rate applied for five days, then it automatically went into a storage period.

Mr. Scoll: By the way, what note are you referring to?

The Witness: Page 99 of Appendix E.

Mr. Graham: The report in Case No. 4090. That note was read into the record this morning and is a part of the testimony in this case now.

The Witness: The note was read this morning with reference to the application of five cents for the first five days and then automatically going in storage. That in my estimation penalizes the shipper heavily on the sixth day, and I don't know of any reason why he should be penalized on the sixth day any more than he should possibly on the fourth or the eighth. And if a shipper came down at the expiration of five days and said "I want to take that out tomorrow", you would be compelled to tell him "Well, now, you are going to have to pay a receiving and delivering charge [fol. 1798] tomorrow." I think the shipper ought to have his option whether he wants to continue on the 5 cents a day rate or whatever rate is found proper to be applied, whether it is a 2-cent rate or a 5-cent rate or 10-cent rate.

Mr. Graham: Is it not a fact that the tendency under the application of that whole note would be for the shipper to leave his goods on the dock rather than to move them, which you hoped he would do?

The Witness: That is the objection I have to the so-called 15-day schedule without the receiving and delivering charge attached to it, because after he has once paid for the 15-day period he would have a tendency to leave his cargo there, similar to the statement made by Mr. Engel where he applied five cents a ton a day for four days and then carried it free for the next fifteen days. It doesn't seem like that serves the purpose.

By Mr. Read:

Q. Now, Mr. Ventre, let us see if you and I interpret this thing the same. We will take canned goods, for instance. The charge for a 15-day storage period if the shipper declared the goods for storage immediately that they were placed on the dock would be 25 cents for receiving and delivering and 12½ cents for the 15-day period or 37½ cents.

Mr. Graham: You are using Appendix E throughout?

[fol. 1799] Mr. Read: I am using Appendix E, page 98.

By Mr. Read:

Q. Do you agree with that?

A. That's right.

Q. If the shipper delivered the goods to the dock and did not declare them for the first five days he would pay five cents per ton or 25 cents.

Mr. Geary: You are figuring five days after the free time?

Mr. Read: After the free time, yes.

By Mr. Read:

Q. They would then automatically go in storage and he would have to pay an additional 25 cents receiving and delivering charge, plus 12½ cents, or a total of 37½ cents plus 25 cents, which is 62½ cents for the sixth day?

A. That would be right.

Q. He would likewise pay that charge for a total of five days at 5 cents per ton and another 15 days or 20 days all told? In other words, there would be no difference between the charge for the 20 days and 6 days?

A. That's correct. And that is the objection that I find in trying to set the rate on a daily basis so high that it overlaps the term rate in too short a period. I think the term should not be less than 30 days but that the daily rate [fol. 1800] should not overlap until about the time set out in Dr. Edwards' study. The difference between high piling and low piling is approximately 30 or 40 days. The five-cent rate in our estimation would be too extreme a penalty on outbound cargo.

Q. All cargo?

A. I would say all cargo other than possibly wool or, to my knowledge, of outbound cargo.

Q. You would not——

A. (Interrupting:) Or automobiles.

Q. You would not, would you, propose any reduction in the per diem charges that are now applicable?

A. No, I would not.

Q. So that if they were higher than 2 cents per day——

A. (Interrupting:) If they were higher than 2 cents per day at the present time I would not propose to reduce them.

Q. Do you feel that it is a burden upon the shipper to declare his purpose at the time the goods are placed on the terminal, that is, as to whether he wants a period storage or not?

A. I feel that it should be. In other words, when a shipper's cargo arrives on the dock, if he doesn't declare

it for a period basis you have reason to assume that he is going to remove it within a reasonably short length of time, and if after leaving it there five, ten, fifteen or twenty days [fol. 1801] you decided, well, it is not going to move, you turn around and high-pile it, and he comes in and takes it out the next day. So I feel that the daily basis should apply until such time as the shipper declares himself for the monthly basis.

Q. Oh. Well, then, you would have the note read that there would be no automatic storage at all? He would pay a flat per diem basis until the time he declared it for storage?

A. That's right, unless you ordered it off the pier under the rule that we all have in our tariffs saying that we can order it off the pier. There was considerable testimony given in this case, as I understand it, that demurrage rate or storage, whatever it may be, is not supposed to produce any revenue. If you strictly apply that interpretation at the end of the free time you ought to apply your rule and automatically move it off. To my knowledge, nobody does it. So they evidently want the revenue.

Q. Well, then, you don't subscribe to the interval of 15 days?

A. I would say the intervals should be 30 days.

Q. Do you think it would be reasonable to charge a shipper on the sixth day, five days at 5 cents per day, which would be 25 cents, plus 25 cents, which would be the storage cost for 30 days; do you believe the 12½, plus the 25 [fol. 1802] for handling, or 75 cents per ton for leaving the goods on the dock for 6 days is reasonable?

A. I think I covered that.

Mr. Geary: Just a moment.

Mr. Scoll: He covered that several times already.

A. (Continuing:) But I would say it is reasonable if the shipper elects to choose the lower of the two storage rates. In other words, if he elects to choose a monthly rate and then for some reason or other he draws it out within a short length of time, I think it is proper that he pay for the receiving charges the same as he would in any warehouse business.

Mr. Scoll: When do you say that that election should be made?

The Witness: That is up to the shipper to make it, when he desires to elect it.

Mr. Scoll: At any time the goods are on the dock?

The Witness: That's right.

Mr. Graham: In the intervening time it will be running on a per diem?

The Witness: If he doesn't elect until such time as he does declare it, it would be on the per diem rate.

Mr. Graham: The choice would be up to him.

[fol. 1803] The Witness: That's right.

Mr. Geary: It would take a wharf demurrage rate for a period of five days, then it may pass to a higher wharf demurrage rate and then at any time between that time he could declare it for storage.

The Witness: You may have a lower wharf—I think that there is a lot of mix-up in this whole thing as to whether we are talking about storage, demurrage or what.

Mr. Geary: Apparently they have used the terms interchangeably, sometimes referring to them as "demurrage" and other times referring to them as "storage."

The Witness: My theory would be, if a shipper leaves his cargo on the dock without declaring it for five, six, seven or eight days he would pay the daily rate of storage or demurrage, or what have you, until such time as he declares it for some other purpose. But until he declared it, that is, for removal from the dock or to place it for term storage—(pause).

By Mr. Read:

Q. If the rate were 5 cents per ton per day and he left it on the dock for 30 days and did not declare it he would pay $1.50 per ton?

A. That's right.

Q. How would you have a record of this declaration of intention from the shipper?

[fol. 1804] A. Any way in which he may ask it, whether he 'phones it or writes it to you or anything else. Just the minute you would turn it over to a monthly basis he would leave a record.

Q. Could you tell me how anyone in the organization other than yourself would know when that request was made and what particular time it would be made?

Mr. Geary: If the Maritime Commission is going to issue an order with respect to this proceeding I presume that they will have sufficient methods of enforcing the order if they issue it.

Mr. Read: We would like to know about it right now.

Mr. Geary: This witness can't tell you, Mr. Read. It will be the Maritime Commission.

Mr. Read: I am asking him to suggest a way to do it.

Examiner Basham: The objection is overruled.

A. Well, I don't know that anyone other than the operator has got to know and the shipper has got to know when it has to be transferred from one basis to the other, unless it is for the purpose of policing. And if it is a question of policing, I think there are a thousand and one questions that you might ask about anything that comes up.

Mr. Graham: In any event, Mr. Ventre, if the Commis-[fol. 1805] sion should issue an order that any such request be in writing, they would be in writing?

The Witness: They would, but it wouldn't be practical, I would say that. But if they issued an order, why, I know that the order as far as the Howard Terminal is concerned will be applied as issued.

By Mr. Read:

Q. Mr. Ventre, do you not carry in your tariff today a provision that a charge will be made for removing the goods from one portion of the dock to the other?

A. For the account of whom it may concern. Let me read the tariff. We have nothing of that type. It is for the account of the party for whom it may be performed.

Q. Hasn't it generally been testified that high-piling is being done today and not being charged for?

A. I will say that in my experience I have never had any shipper ever ask us to move his freight from one location on the dock to another or to high pile it, except in very remote instances, and when they have requested it they have been billed for it. But the instances are very remote.

Q. Does the Howard tariff read the same as the Farr tariff in respect to that particular rule?

Mr. Geary: You don't mean to infer by that question and the reference to the Parr tariff that the practice which

you are interrogating Mr. Ventre about is a practice which [fol. 1806] is engaged in by the Parr Terminal, do you?

Mr. Read: Read the question.

(The question referred to was read by the reporter.)

Mr. Read: I am just trying to find out how this change in the status of the goods from a per diem basis to a period basis would come about so that we would know just when the instructions were given and when the rates were applied that they were the proper rates.

A. Well, I think——

Mr. Read (Interrupting): He has just said something about piling for the account of whom concerned, and that no shipper ever gave him instructions to move the goods. Now, if the rule in his tariff reads the same as it does in the Parr tariff, and I am inclined to believe, although it may not be correct, that it is the same as the Parr tariff, there is nothing in that rule which says "At the request of the shipper."

The Witness: When we move freight today on our docks the one that is concerned is ourselves. We are moving it for our own convenience, to get it out of the way or to high-pile it to take less floor space.

By Mr. Read:

Q. Then if you have to high-pile under this proposal that you have and it was for your own convenience and not requested by the shipper, you would take the same view and [fol. 1807] not charge for it?

A. We never charge for high-piling today. There is no charge made for high-piling. I don't believe that at the present time we have a——

Mr. Scoll: (Interrupting) Just a moment. If Mr. Read has a point there, that no ruling or practice of the Commission might order with respect to the determination of when the daily or the period basis is to begin, would be effective because it would be evaded by the terminals, I think he ought to elaborate upon that a little more. Is that from your experience you are talking about now or from somebody else's experience?

Mr. Read: It is just on this particular thing that I cited about this extra handling. It is treated in this manner: That the terminals consider it something that is necessary

because of some inconvenience on their own dock and no charge is made.

Mr. Graham: What has that got to do with this at all?

Mr. Read: I am just trying to find out how this rule would work. I don't know. That is why I asked the witness.

Mr. Scoll: You are talking now about high-piling, but before you were talking about giving notice about a change of storage status from a daily to a period basis. As I got [fol. 1808] the inference from your remark, it was to the effect that it couldn't be policed and there were opportunities for evasion. If that is the sense of your remark I think that we ought to have in the record some testimony as to whether or not if that actually happens and where.

Mr. Read: Well, obviously it doesn't happen, Mr. Scoll, because there is no such provision in the tariff today.

Mr. Scoll: But you are suggesting that it would happen.

Examiner Basham: I don't think we are getting anywhere at all.

Off the record.

(Remarks outside the record.)

Examiner Basham: On the record.

Mr. Graham: I have one more question, if I may.

By Mr. Graham:

Q. Mr. Ventre, you spoke about this inbound cargo where the expense of handling was greater than with outbound cargo. What particular commodity have you in mind?

A. You mean on inbound?

Q. Yes.

A. Well, any commodity. I think we have touched on canned goods, that is, comparing outbound canned goods received for eastbound shipment or outbound shipment as [fol. 1809] compared with inbound shipments of grapefruit, pineapple or soups.

Q. Do you have a considerable volume of that type of cargo as compared, let us say, with Encinal or other terminals, or does Encinal or other terminals have a greater volume of it than you?

A. Well, we don't have any volume of canned goods in that inbound category, and I would say that any rate that is prescribed should reflect the difference in cost between

an outbound movement and an inbound movement rather than lump them.

Q. Do you know what Encinal's picture is from your own knowledge in that respect?

A. I do know that they handle a considerable quantity of pineapple on their docks which comes in by steamer, and there is no question in my mind—we have had some experience in years past on pineapple—that the cost of handling that pineapple would be considerably more than handling outbound canned goods if it is handled in the same facility.

Mr. Graham: I think that is all.

Mr. Townsend: I have one question.

By Mr. Townsend:

Q. Mr. Ventre, do you believe that it would be better to state the wharf demurrage charges or rates on the principal commodities on a package basis instead of a tonnage basis?

A. When you use the term "demurrage" I would say in [fol. 1810] connection with water movement, whether you are talking about demurrage or storage, the so-called daily rate, I would say, would be better to prescribe it on a tonnage basis because you are continually running on to miscellaneous tonnage that might lay over the free time and your cost possibly of going down and finding out what the cubic measurement of a certain particular shipment is that is only on hand for one or two days might be more than you would get out of the revenue. On the other hand, I don't see any reason why this rate should be so high on the daily basis that it would automatically defeat its purpose by having a rate adjacent to it on a removed property or across the street from it that would tear down that daily rate.

Q. I was just talking about the question of the principal commodities, canned goods and some of the other ones, whether it would be fair in the application of the charges to have your rate stated not in so many cents per ton per day or per ton for 30 days, but so many cents per standard package.

A. For the type of cargo that runs to and from steamer, I would say per ton, where you are taking canned goods where at the present time you have undoubtedly 50 or more sized packages.

Mr. Townsend: That is all.

Examiner Basham: You are excused.

(Witness excused.)

[fol. 1811] Examiner Basham: We will have a short recess.

(A short recess was taken.)

Examiner Basham: On the record, please.

Mr. Scoll: In connection with the point that was raised by Mr. Townsend and rather thoroughly discussed by counsel and witnesses, may I request that Howard Terminal produce for the record the lump sum amount of carrying charges for which the amount of $7,931.36 assigned to wharf demurrage as shown on Sheet 1 of Schedule B, Line 4, and similarly the lump sum of carrying charges on land for which the amount is $4512.74 assigned to wharf demurrage as shown at Line 13 on Sheet 1 of Schedule B. The same for other facilities as shown in Line 8 on the same sheet and other facilities as shown on Line 17. If we have those lump sum amounts and, in addition to that, if he will furnish us with the total amount of shed area——

Mr. Graham: (Interrupting) You have that.

Mr. Scoll: (Continuing)—from which the amount of 55,322 square feet is assigned to wharf demurrage, column (h), Schedule B, Sheet 3.

Is that amount, Mr. Graham, the 97,231 square feet?

Mr. Graham: Mr. Differding took off some figures during the recess which gave the total square foot area of the sheds, part or all of which are used for wharf demurrage. Whatever that figure is I am agreeable to have it read into [fol. 1812] the record. I don't know what it is.

Mr. Scoll: That figure is 97,231 square feet. Are we to understand that that is the total shed area from which the amount assignable to wharf demurrage of column (h), Schedule B, Sheet 3 is taken?

Mr. Graham: Unless we tell you to the contrary in reporting this information.

Mr. Scoll: Will you confirm that when you report the other information?

Mr. Graham: We will.

Mr. Scoll: Does that answer your requirements, Mr. Townsend?

Mr. Townsend: If it satisfies you I am happy. I don't think personally that it gives the same information that the others have produced. Now, I am not trying to be obstinate or anything there, but I do think that Howard Terminal should furnish the complete information for column (c) of Schedule A and B just as Encinal and the Port of Stockton have done. Now, if you are satisfied with it, I am satisfied too.

Mr. Scoll: There has already been a request on the record for the complete information to be supplied for column (c) of Schedule A for the record, and the information that I requested covers column (c) in Sheet 1 of Schedule B.

[fol. 1813] Mr. Townsend: Where do we stand on column (c) of Schedule A? Will that be produced?

Mr. Scoll: Yes.

Examiner Basham: Go ahead.

Mr. Scoll: Mr. Graham.

Sumner Graham resumed the stand and further testified as follows:

Direct examination.

By Mr. Scoll:

Q. You have been previously sworn?

A. That's right.

Q. Have you before you a copy of Exhibit 140?

A. Right.

Q. That was prepared by Encinal Terminals?

A. Yes.

Q. In preparing Exhibit 140 did you follow the formula of Dr. Edwards?

A. Precisely.

Q. Did you make any departures from the formula?

A. None whatsoever.

Q. You used the period from November 1, 1938 to October 31, 1939, I see.

A. That's right.

Q. And that was a typical period of your operations in which there were no strikes?

[fol. 1814] A. That's correct.

Q. The figures set forth in Exhibit 40 are based on your books and records and your actual operating accounts, are they?

A. That is correct.

Mr. Scoll: I have no further questions at this time.

Cross-examination.

By Mr. Graham:

Q. You heard Mr. Ventre's testimony in connection with canned goods inbound, particularly pineapple, did you not, Mr. Graham?

A. I did.

Q. Does Encinal enjoy a considerable movement of these inbound shipments of pineapple?

A. We do.

Q. How is that reflected in your studies that you made?

A. In what way do you mean?

Q. Or let us say this: Does it reflect itself in the study?

A. Yes.

Q. How?

A. Well, all of the costs allocable against pineapple or any other commodity on wharf demurrage during this period are included in the total tonnage shown in our Exhibit 140. [fol. 1815] So any of the costs which would arise from the handling of pineapple would also be included in the figures included in our study.

Q. I take it, then, that since there is that inclusion your figure would necessarily be higher than if you enjoyed other cargo which didn't require the high cost that pineapple does?

A. That's correct.

Q. Are all of your units included in this study on Schedule A, Sheet 1?

A. The units?

Q. Transit sheds?

A. The units within which we stored goods during this period are covered, Unit A and Unit C.

Q. And there are other units in which you had previously or have since stored which are not included in this schedule?

A. There is one other unit, Unit B, in which we store a very, very small amount of wharf demurrage at any time.

Q. That wasn't used during this period?

A. That's correct.

Q. How about others that you do store in occasionally besides A, B, and C?

A. The costs encountered at buildings other than the three which are located at the foot of J Street and on the water are not included in this study.

[fol. 1816] Q. Although you do store on so-called wharf demurrage in those facilities?

A. That is correct.

Q. And you did during this period?

A. I am not sure of that, Mr. Graham.

Q. Is the revenue reflected in this account at all?

A. Not knowing whether or not we had storage in any outside buildings I couldn't answer that question.

Q. Well, all of the revenue is accounted for in this study whether you did or you didn't have storage in outside buildings?

A. That is correct.

Q. How about transfer charges to or from those outside buildings?

A. Now that you have gone into the question I will say that during this period there was no storage in any outside buildings which would change the figures in this schedule. There are no revenues earned by Encinal on storage in outside buildings which are in this schedule. Therefore, the only revenues and expenses which would be of interest are those which arose out of storage in Units A and C.

Q. May I talk about the outside buildings for just a moment?

A. Right.

Q. First of all, as I understand it, you do not know [fol. 1817] whether you did or you did not have such storage in these outside buildings during the period of this schedule?

A. I corrected that by my statement when I say that there was not. There are no costs or no revenues included.

Q. I understand. Was there any storage during that period?

A. No, there was not.

Q. And since that period, however, and at present there is storage in those facilities?

A. That is right.

Q. So that if this were made up covering the period in which you did have storage in those facilities the results of this study would be different, of course?

A. Would be changed, of course.

Mr. Scoll: Do you mean by that that your costs would be different, the ultimate unit costs?

The Witness: Yes. Your costs would be different in relation to your revenues.

By Mr. Graham:

Q. Your revenues would remain the same?

A. That is correct. But your costs and your revenue would be different.

Mr. Graham: I think that is all.

By Mr. Townsend:

Q. In your last answers pursuant to Mr. Graham's ques- [fol. 1818] tions, were you referring specifically to some of the uptown warehouses that you mentioned in your prior testimony in February?

A. That is correct.

Q. And you say that during the period covered by this exhibit there was no wharf demurrage or wharf storage cargo in those warehouses?

A. That's correct.

Q. Referring for a moment to Schedule B, Sheet 1 of your Exhibit 46, just so that we can see the method that you have followed, will you take, for example, line 4, which shows the figure of $37,445.56 in column (e) and then the figure of $14,069.06 in column (h); will you just explain briefly the method that you used in order to develop those figures?

A. We find the carrying charges according to the formula as set up by Dr. Edwards on the total shed of Unit A and then applied that same figure, that same cost against the number of square feet which we found we were using for wharf demurrage in Shed A, and the same method of handling was followed in regard to Shed C.

Q. Do you show the number of square feet which were involved in Lines 89, 90 and 91 of Schedule B?

A. That's right.

Q. And the figures on the left in column (d), I assume, [fol. 1819] are the total areas and those are the wharf demurrage areas on the right?

A. That is correct.

Q. Well, then, as I understand, in going back again to Line 4 of Schedule B, and the other items involving carry-

ing charges you did not allocate 20 per cent; you took the ratio of what you found to be wharf demurrage space to total space?

A. Actually, yes.

Q. And did you follow that same percentage throughout all of these figures, including the dock operation costs?

A. We followed the percentage as set forth in the Dr. Edwards' formula in 1935. We used those same percentages in 1938 and '39.

Q. You mean by that that you took whatever percentage Dr. Edwards took in building up your costs for his formula in 1939?

A. That is correct.

Q. And carried those through?

A. That is correct.

Mr. Townsend: That is all, thank you.

By Mr. Graham:

Q. May I go back to this same question? Am I correct in my understanding that you did not use the 20 per cent referred to in Schedule B, Sheet 4, but that you took the actual costs of the percentage of the area used for demurrage?

[fol. 1820] A. If you will allow me one minute I will make the computation that will give you the answer to that question. (Calculating.) Based on the total area of Unit A and Unit C 20 per cent would amount to 52,555, whereas our figures show 47,910, which is quite close.

Q. And your computation from then on in connection with Schedule B is based upon the percentage that the area actually used bears to the whole area?

A. That is correct.

Q. And not 20 per cent?

A. That's right.

Q. In other words, you did exactly as Mr. Ventre of the Howard Terminal did?

A. I don't know just——

Q. (Interrupting:) I mean, the same formula that they used, the actual space used?

A. Yes. We took the actual cost of carrying the total areas, and then applied that cost against the area which we used on wharf demurrage.

Q. Out of the whole?
A. That's correct.

By Mr. Townsend:

Q. In determining your underlying costs did you take just the transit shed part of, whatever you call it, Unit A and Unit C; or did you include any of the apron, and so [fol. 1821] on, to start with?

A. No. There is no part of the apron charged to wharf demurrage under Dr. Edwards' formula.

Q. You just took, then, your actual cost of your transit shed and the land under it?

A. That is correct, in taking into consideration the aisle space and increasing your carrying charges so that your full return is on just the area used by wharf demurrage.

By Mr. Graham:

Q. While these gentlemen are talking may I go on with some more questions on this particular subject? I take it the reason you used the actual percentage of surface area covered for demurrage purposes as it bore to the whole area was because you found that to be more accurate than the 20 per cent suggested by the Edwards theory?

A. Well, actually we didn't take into consideration the 20 per cent, nor did we work on a percentage feature. We took the actual cost to carry all of the area and if that was a dollar per square foot, then for the number of square feet that we used on wharf demurrage we applied that $1.00 per square foot. There is no question of percentage in this at all.

Q. But if you did use the percentage you would come out with the same asnwer?

A. Yes.

[fol. 1822] Q. And you did that because you found that was more accurate in respect to your own operations than the Edwards theory of 20 per cent allocation?

A. Yes. You see, this formula was made by Dr. Edwards on paper with respect to uniform cost accounting. Now, you couldn't expect that all of his figures would hit each terminal right "on the nose", so you would have to use your actual figures in order to have a true picture.

Examiner Basham: Is there anything further?
Mr. Read: Yes.

By Mr. Read:

Q. Mr. Graham, the Encinal Terminals have a warehouse operation I believe they carry on under the California Warehouse Tariff?

A. We do.

Q. Is any of the revenue or any of the expense included in this statement connected in any way with cargo that may have been handled under the Warehouse Tariff?

A. No.

Q. Do you permit the storage of goods on the transit areas of your dock under the rates named in the Warehouse Tariff?

A. We do, except that those areas are separated by fences and outside parties or people who are not in our employ are not allowed to go into those areas to handle goods. We handle the goods from and to those particular [fol. 1823] warehouse areas which were set apart from the transit areas by fences.

Q. But they are under the same roof?

A. They are under the same roof.

Q. And in the same space?

A. That is correct.

Q. And simply by putting a fence around it you either in a sense declare it as warehouse area or demurrage area?

A. Well, not quite as simple as that, Mr. Read. There is a different method of handling in the warehouse and under warehouse rates and regulations than under our present wharf demurrage rates and regulations.

Q. Oh, certainly.

A. And so in order that our warehouse operations may be held separate and distinct from our wharfinger operations, those fences are placed about it. And all of the rates, rules and regulations contained in the Warehouse Tariff are in effect on that particular cargo which is on a warehouse basis and which might be in another building, for that matter, so far as the difference in the two methods of handling.

Q. Then during this period, if there were any cargo placed on the transit shed which you placed a fence around and charged under your Warehouse Tariff, you omitted those figures from this report?

A. That is correct. And beyond that there was a physical [fol. 1824] handling which had to be gone through before

the goods went from the transit areas into the warehouse areas.

Mr. Read: Will you read that last answer?

(The answer referred to was read by the reporter.)

By Mr. Read:

Q. Oh, are the goods actually moved?

A. Oh, yes, into those areas which are fenced in. Those areas do not change from day to day merely by moving fencing.

Q. Oh. I had the impression that you had a portable fence and just put it around the cargo that was to be warehoused and the fence was taken away when the cargo was removed?

A. Those fences haven't been moved for a good long time. The cargo is picked up from the transit area and moved into the warehouse area by our labor, for which we get a charge.

Q. On Line 46, Sheet 2, Schedule E, you show those figures for the expense of the average cost per ton of high-piling, which looks like 68.02. Is that correct?

A. That is correct.

Q. And that is only for the high-piling cost?

A. That's for—in some instances, especially on inbound cargo, we must pile the goods from the floor up rather than starting after the seventh case or the first tier.

Q. And so the tons high-piled shown in the line above includes the weight of the goods from the floor to the top [fol. 1825] of the pile rather than that portion only high-piled?

A. That's right.

Q. To this 68.02 must be added other costs to arrive at your complete cost of storage, is that correct?

A. Yes.

Q. And where does that appear on your exhibit, please?

A. On Schedule E, Sheet 2.

Q. And that is 41.5 cents per ton, is that it?

A. You have to take into consideration, according to Dr. Edwards' formula, checking, miscellaneous moving, overheads variable, overheads non-variable.

Q. Do you come out with a final figure of 41.5 per ton when you include all those items?

A. No. If you wait just a second I will give you the figures. Now, your checking is 9.5 cents; your miscellaneous moving is 4.55 cents; your non-variable overhead 19.60; variable overhead 11.58; floor space cost, taking into consideration the fact that one ton of canned goods not high-piled would occupy 7.4 square feet, must be multiplied by the square foot cost of .0576, which gives us a figure of 46.02, or a total of 87.85 cents on cargo 30 days not high-piled.

Q. 87.85?

A. Right.

Q. Per ton?

[fol. 1826] A. That's right.

Q. Would the cost be less if it were not for pineapple?

A. Well, the pineapple does contribute somewhat to this cost. However, there are other tonnages of inbound cargo which are discharged to the dock by the stevedores and must be removed from that particular point if the goods are going to remain in storage; and those costs are higher than on so-called outbound cargo.

Q. I take it from the result of these computations that the costs that are reflected here in this demurrage and storage service in so far as Encinal is concerned is almost as expensive an operation as the expense connected with the other services that are rendered?

A. Well, you have some figures upon which to base that assumption.

Q. I am merely——

A. (Interrupting:) However, I haven't, so I couldn't answer that question.

Q. The thing that strikes me was the relationship of this 87.85 cents per ton, and that if you published a storage rate that would produce that the relationship of that rate to the rates published in your tariff for other services, such as service charges and carloading, and so forth.

A. You can't assume that either.

Mr. Scoll: That is an interpretation that you can make [fol. 1827] from the exhibit, Mr. Read. I think it is rather a question of argument, isn't it?

By Mr. Read:

Q. If you will refer to Schedule A, Sheet 1, you carry thereon certain depreciation and carrying charges on struc-

tures, wharves and land. Are those properties owned by the Encinal Terminal Company?

A. The structures are.

Q. Is the land?

A. No, we rent the land.

Q. You rent the land?

A. Yes.

Q. In other words, it is still owned by the Alaska Packers?

A. That's correct.

Q. Did you compute these carrying charges on the valuation that was placed on that land by Dr. Edwards and the railroad engineers in their investigation in Case No. 4000?

A. We did.

Q. Mr. Graham, I would like you to refer to Exhibit 142. Under the heading "Capital Assets" you show "Wharves, Etc. $1,312,900.83". Does that "Etc." include land?

A. No, it does not.

Q. What does it include besides the sheds and the wharves?

A. I will have to—I know it doesn't include any land, but I will have to find out exactly what. There may be [fol. 1828] some small buildings around the facilities which have nothing to do with the wharves and the sheds thereon, but if it is important I will get that information for you.

Mr. Graham: May I suggest, would that include—(paused). I was going to suggest that it could include equipment, but it couldn't.

The Witness: No, because equipment comes next.

By Mr. Read:

Q. Mr. Graham, I show you a copy of the Encinal Terminals report to the State Railroad Commission for the calendar year of 1939, page 4, where it shows land and buildings, $1,303,782.65. Have you any explanation to offer for the difference between that figure and the figure that is shown on Exhibit 142 following "Wharves, Sheds, Etc."?

A. No, I haven't. I don't know what that means.

Q. I take it that your figures cover exactly this same period that is covered in the report to the Railroad Commission.

A. That is right. However, where your figure of land appears that should not be in this report that you have

copied or someone at your request copied. It well may be that that might have been marked out in that original copy. There is no land in that figure of one million and so forth.

Mr. Graham: There is no land that you own?

[fol. 1829] By Mr. Read:

Q. In other words, that figure should really cover wharves, sheds, and so forth.

A. I will tell you what the "Etc." means.

Q. What?

A. Fences, roadways, waterworks system, small buildings, balloon tracks, and a basin bulkhead.

Q. And those are owned entirely by the Encinal Terminals?

A. That is correct.

Q. Mr. Graham, refer to your Exhibit 141, the first line, "Wharfage, Dockage and Tolls, $329,876.42." Does that amount also include service charges?

A. Certainly, only it is under the heading of "Wharfage." The terminals around the Bay here call "Wharfage" "Service Charges", Mr. Read.

Q. In the second line you show "Storage, Demurrage, Loading, Unloading and Checking, $130,402.54." What proportion of that amount is actually storage and demurrage, the amount shown in your Exhibit 140?

A. That's right.

Q. The entry further down under "Expenses" reading "Payrolls & Expenses," what are those expenses? Expenses for labor and expenses to employees such as for traveling and so forth?

Mr. Geary: Mr. Read, what is the purpose in asking that [fol. 1830] question? The item specifically speaks for itself and obviously covers exactly what it expresses itself to be.

Mr. Read: I think, Mr. Geary, it is a large amount and——

Mr. Geary: That may be entirely true and it may have a figure of a million dollars in front of it, but that doesn't answer the question that I ask you. I am asking you what is the purpose of the inquiry.

Mr. Read: To find out just what the nature of these expenses is so that we may know whether they are allocable to demurrage.

Mr. Geary: I object upon the ground that it is incompetent, irrelevant and immaterial. Furthermore, the expenses that are allocated to demurrage are indicated in Exhibit 140 specifically.

Mr. Read: You don't need to answer it if you don't want to.

By Mr. Graham:

Q. While we are waiting for counsel maybe I could ask a few questions to save a little time. Will you take a look at Sheet 1, Schedule A, Mr. Graham? Now, you are, of course, familiar with this Exhibit 60 in this docket, which is the preliminary report in Case No. 4090.

A. Uh-huh (affirmative).

[fol. 1831] Q. On pages 135 and 136 and following, the position of Encinal with respect to the land and the sheds is set forth. Has that picture changed any since this preliminary report?

A. No.

Q. I don't want to ask you a lot of questions on it.

A. Our newest building would have been completed prior to the time that Dr. Edwards made his study, so there has been no appreciable change since then.

Q. And the data in respect to ownership of the land and ownership of the sheds and rent from the owner of the land, and so on, is the same?

A. That's correct.

Q. This covers up to January 5, 1945. I don't want to get you confused on this, but I just want to get the record straight. It is the same picture now as it was? Down there at the bottom, that projects the rent.

A. No, no. That was changed in 4090. They set the rent that we could pay. That was copied out of an old lease.

Mr. Scoll: That is the preliminary report you have there, Mr. Graham.

Mr. Graham: That is right. I know it is. I know it is.

By Mr. Graham:

Q. So that the figures contained on this preliminary re-
[fol. 1832] port on page 138 in respect to the rent are not the correct figures?

A. That is correct.

Q. But they are covered by the final report?

A. Yes.

Q. Will you look at that Schedule A, Sheet 1 down at the bottom where it says "Carrying Charges on Land"? As I understood your testimony, it was to the effect that Encinal Terminals as such did not own any of this land?

A. That is correct.

Q. What taxes do you pay on land?

A. The Railroad Commission set up a basis upon which we would pay a certain amount of rent plus the taxes on the land.

Q. And that's the taxes on the land that is owned by Alaska Packers on which your sheds are located?

A. That's right.

Q. And that is what is meant by this entry?

A. That is right.

Q. Will you take the next one, the returns on the land at 7 per cent.

A. That is the amount of rent that we pay, so we must recover that.

Q. So that that really could have been put up above in Line 21, "Rentals paid on land"?

[fol. 1833] A. Yes.

By Mr. Read:

Q. In other words, Mr. Graham, the $9,518.63 listed as taxes, plus the return of 7 per cent, or $9,171.78 constitutes the rental?

A. Yes. In other words, the Railroad Commission in 4090 prescribed that you should make a return of 7 per cent plus the taxes on the land.

By Mr. Graham:

Q. If you work that out that will give you the value of the land, won't it?

A. Yes.

By Mr. Read:

Q. Mr. Graham, has the Encinal Terminals placed in the record here any figures to show the ratio of demurrage to total business in terms of tons and in terms of revenue?

Mr. Scoll: That is in the record, Mr. Read. I think it is Exhibit No. 143.

Mr. Read: I haven't a copy of the Exhibit and I would like to have one, please.

Mr. Scoll: I will give you one.

(Whereupon a copy of Exhibit 143 was passed to Mr. Read.)

By Mr. Read:

Q. Is there an exhibit that would show the ratio in terms of revenue?

[fol. 1834] A. No.

Q. Could you furnish such a statement?

Mr. Geary: We could but we won't unless we are ordered to do it by the Commission.

Mr. Read: Mr. Scoll asked for that and we have furnished it.

Examiner Basham: Off the record.

(Remarks outside the record.)

Examiner Basham: Back on the record.

By Mr. Graham:

Q. Mr. Graham, you heard Mr. Ventre's testimony in respect to the application of the rates on wharf demurrage on the daily and period basis. Can you express yourself as to your views on this application?

A. We are not entirely in agreement with the views of Mr. Ventre, we are sorry, because perhaps there is a difference in the types of cargo handled. We feel that there should be a set of rates which would apply after the free time period to apply on certain types of cargo and which would be in the form of a so-called demurrage rate. We also feel——

Q. (Interrupting) Would that be daily or period basis?

A. It's partially daily,—might I say that we have felt that the wharf demurrage rates which have been in effect at San Francisco for over a great many years is one which we might well adopt: First to third day after the free [fol. 1835] time, 2.5 cents a ton per day; fourth to the seventh day, 5 cents a ton per day; and each succeeding day thereafter 10 cents per ton per day, which would allow a period within which the owner of the goods to decide whether or not he wants to take his goods off the dock. Now, that would be in the form of a wharf demurrage or

penalty rate. On the other hand, we feel that there should be a storage rate based upon a period of 30 days with a receiving and delivering charge. We feel that there should not be in this storage rate a per diem basis in view of the fact that on a per diem basis you cannot get returned to you your expenses involved in the handling of your wharf demurrage cargo.

Q. Would you have an election by the cargo owner on the determination as to whether he would be on this semi-period basis, as you have described, or the 30-day storage basis as Mr. Ventre suggested?

A. It would appear to me that your two types of rates would pretty well be straightened out in regard to who would use the two types of rates. In other words, any person who is a regular storage customer of yours would automotically declare his goods to go on a storage basis. On the other hand, if you are thinking of a cargo which merely remains on the dock beyond the free time because of some exigency met by the owner of the goods, then you are discussing a different type of rates. The goods which [fol. 1836] remain on the dock over the free time where the person has no idea of storing them, when the goods are there, could well be handled under these rates of first to third day, and so forth. But your regular storage accounts certainly wouldn't come in on a basis of these lower rates. They would know whether they were going to store or not.

Q. So it does come down to a use of the cargo owner's discretion or his determination as to which basis he is going to leave it on?

A. Well, certain types of cargo——

Q. (Interrupting) Well, that is a fact, is it not?

A. Yes, absolutely.

Q. This suggested, let us call it, "San Francisco basis" would mean that the cargo would be on the daily basis after the seventh day?

A. That is—we had better get together on our free time now.

Q. I mean, after the free time.

A. After the free time, yes.

Q. I am not discussing free time at all; after the free time. You would have two short periods, and then daily basis after the seventh day?

A. That's right.

Q. Now, on the first one to three days you would have a [fol. 1837] per diem rate?

A. Yes.

Q. So that if he left it one day he would pay a per diem rate, if he left it two days he would pay a per diem rate, if he left it three days he would pay a per diem rate, and then the fourth day he would pay a different per diem?

A. That's right. He would go up.

Q. Fifth, sixth and seventh, the same he paid on the fourth?

A. Right.

Q. And then the eighth day and from there on, so long as he stayed there, he would be paying the same per diem?

A. Up until the time he would declare it for storage.

Mr. Graham: That is right. Thank you very much.

By Mr. Read:

Q. On that question, Mr. Graham, do you make any suggestion in line with the question I put to Mr. Ventre about how it would be determined when the goods actually went into the storage period?

A. No, I would rather have you put that question to me.

Q. I am asking you.

A. I perhaps could not remember what you asked Mr. Ventre, so you ask me the question and I'll answer it.

Q. The question was what method you would suggest so that it would be possible to determine without any doubt [fol. 1838] the actual time that the request is made that the goods be placed in storage?

A. I believe that it would be unnecessary to have any hard and fast rules applying to that particular point because it would appear to me that the terminals are in business to make a profit, and if they were to discover some way to chisel, which I believe your question is directed at, they would only be reducing their own revenue. And so if the shipper were to know that his goods were on the dock at these high per diem rates, he would have sense enough to declare the goods for storage, and if he knew that they were going to stay there for a long period of time, certainly there would be no interest on the part of the terminal to change the records around so that they would be on any other basis. So I see no reason of having a hard and fast rule.

Q. Well then if, as you say, it would not be wise for business policy if the terminal is losing money to do a thing like that, would you explain why they are now piling pineapple without a charge when the tariff provides for it?

Mr. Scoll: Whose tariff provides for it? Are you referring to the same provision with respect to the high-piling that you read from?

Mr. Read: I believe it is the Encinal tariff.

Mr. Scoll: I can's see what high-piling on pineapple and absorptions of the cost has to do with the question you [fol. 1839] asked him.

Mr. Read: High-piling, as I take it, constitutes moving. That is, if you move a half of a portion of a pile that you have on your dock so as to conserve half the space, you are moving the cargo.

Mr. Geary: And you are interpreting that to be a movement which is for the benefit of the cargo, which in reality it is not in many instances because it is a movement for the benefit of the terminal operator in order to carry out the purpose for which the terminal is constructed. I think that the basis of the language in the rule which you read "For the benefit of whom concerned" does not merely mean that the "whom concerned" in this situation is the shipper or the consignee. It is construed by these terminals to be the terminal operator.

Mr. Graham: The Witness Ventre testified that opposite.

Mr. Read: All right.

By Mr. Read:

Q. Do you contemplate two rates, one for normal piling and one for high-piling?

A. No. However, there might be one on inbound and one on outbound cargo, as suggested the same as Dr. Edwards proposed.

Q. But it would only be a high-piling rate, is that correct? [fol. 1840] A. I don't understand your question.

Q. Well, Dr. Edwards has one proposal. In one case it is normal piling and in another case high piling. Would you suggest that there be two rates, taking into consideration that the goods high-piled will only occupy, if they double it up, half the space that they take on normal piling?

Mr. Scoll: Are you talking about demurrage or storage now, Mr. Read?

Mr. Read: Well, they are so joined together it is hard to distinguish one for the other. Call them both demurrage and one is a long term demurrage. That is really the proper name for it because it is not a storage business.

A. I still don't understand your question. You will have to read it to me.

(The question referred to was read by the reporter.)

The Witness: Well, of course, your question is so very difficult to answer in view of the fact that I don't believe it takes into consideration what we are discussing. However, in view of the fact that Dr. Edwards proposed two rates, one on inbound and one on outbound——

Mr. Geary. (Interrupting) For high-piling?

The Witness: Two storage rates, that is, two different storage rates and two different receiving and delivering charges.

Mr. Graham: You are talking about canned goods alone? [fol.1841] The Witness: Canned goods alone, we would believe that perhaps we could adopt two bases of rates because of the difference in the handling of inbound cargo as compared with the handling of outbound cargo.

By Mr. Read:

Q. Well, I am talking about cargo in one direction, outbound, and canned goods, which has been the subject here for some time.

A. No, you couldn't have two rates on outbound goods, one applying at your facility, for instance, and one at ours.

Q. I am talking about entirely Encinal, not the Parr.

A. You couldn't have two rates.

Q. Encinal couldn't have two rates, one when the goods are normally piled and the other when they are high piled?

A That's correct.

Q. Since much of this extra cost in connection with demurrage and storage is attributable to the pineapple and you mentioned a few other commodities, do you see any objection to making a higher rate for the storage of canned pineapple for that reason than you would on other canned goods?

A. You couldn't have a higher rate on canned pineapple than you do on any other commodity.

Q. Why not?

A. Because you couldn't.

[fol. 1842] Q. Why?

A. Because you have other commodities coming in that are handled in the same way as pineapple, and so you would have to have a higher rate on that. It is canned goods still. You couldn't have a higher rate on that than on some other commodities.

Q. If it cost more to handle pineapple than canned peaches, don't you think that is a justification for a higher charge for storing pineapple?

A. No.

Q. Have you ever made a study of the making of rates, Mr. Graham, and particularly transportation rates?

A. No. I haven't had that pleasure.

Examiner Basham: Is that all.

Mr. Read: I think that is all, yes.

By Mr. Graham:

Q. Mr. Graham, I left you up in the air on this application of the so-called "San Francisco rate," that one to three days and four to seven days. I take it that coupled with that application you would be of the opinion that the right or discretion of the terminal to apply other rates, as the San Francisco terminals now do, would have to be eliminated?

A. Yes.

Q. In other words, they couldn't charge the period rate [fol. 1843] or this 1-to-3- day rate and still run?

A. No.

Mr. Geary: You are talking about the rates which apply on the general docks rather than the rates which have the period rates which have heretofore applied on Golden Gate or State Terminals?

The Witness: That's right.

Mr. Graham: Yes, that is right.

Redirect examination.

By Mr. Scoll:

Q. Mr. Graham, does it cost as much to store pineapple that is high-piled as it does to store pineapple that is not high-piled for the same length of time?

A. Well, you have to take two things into consideration. If you high-pile the goods you are then using less floor

space. In other words, if one ton of pineapple will use up 7.4 square feet when not high-piled, then similarly if it is piled to double the height it will use 3.7 square feet. Under those circumstances you then reduce the floor space cost and add to it the cost of high-piling. Over a period of time I believe you will find that high-piling of canned goods, the cost will reduce itself; whereas where it is allowed to remain on the dock at normal height the cost will remain the same.

Mr. Scoll: No further questions from me.

[fol. 1844] Recross-examination.

By Mr. Geary:

Q. Mr. Graham, with respect to the question that was asked of you by Mr. Read concerning a different rate on pineapple, do you have pineapple inbound and outbound?

A. The pineapple moves in both directions.

Q. And you can readily appreciate, or do you agree that if you did have a different rate on those particular movements that the one shipper would be complaining about a preference and a prejudice because it was exactly the same commodity?

A. That is correct.

Q. Your suggestion with respect to the San Francisco basis is to be applicable on both inbound and on outbound movements?

A. Right.

Q. With respect to your actual operations involving high-piling have you had situations occur on your facility where merchandise has been high-piled and the Encinal Terminal has undergone the expense and cost of high-piling only to have that cargo ordered out of the terminal the following day?

A. Yes.

Q. Or certainly within a period within which you could not possibly recoup the cost on demurrage charges that you [fol. 1845] had to outlay in undergoing the high-piling operation?

A. That is correct.

Q. Referring for a moment to Exhibit 140, that Dr. Edwards formula, and I refer specifically to the summary schedule, in Line 14, using the high-piling cost average, is

the only place that you can put in what your high-piling costs were in that Exhibit; is that correct?

A. That is correct. It was only one column. Therefore, you must arrive at the average cost for high-piling.

Q. Which covers both inbound and outbound movement on the Encinal?

A. That's right.

Q. And in one direction your costs are higher than they are in the other?

A. That is right.

Q. Is it possible for you within ten days after the conclusion of this hearing to prepare a statement indicating what your experience was with respect to high-piling inbound in comparison with your costs with regard to high-piling outbound?

A. Yes.

Mr. Geary: May I ask that that be permitted to be made a part of the record in this hearing, Mr. Examiner, and the copies furnished to the parties of record?

Examiner Basham: All right.

[fol. 1846] By Mr. Geary:

Q. When you engage in the high-piling operation over at the Encinal Terminals, is that high-piling operation conducted by hand or by machine?

A. By both.

Q. Have you any statement which you can make with respect to the amount of space which is lost when machine piling is involved in comparison with the hand piling?

A. Based upon studies made we find that when we pile on pallets and with machines there is a loss of approximately 20 per cent as compared with the solid piling by hand.

Q. On Schedule E, Sheet 2, Line 43 you have there a figure of the total tons received on wharf demurrage, the figure being 33,006 tons. Can you state what percentage of that was inbound and what was outbound?

A. 81 per cent inbound and 19 per cent outbound.

Q. You do not feel that a period shorter than a 30-day period is adequate to permit the terminal operator to recoup his expenses for the storage charges?

A. I do not.

Q. And to that 30-day period there should also be carried with it a receiving and a delivering charge?

A. That's right.

Mr. Geary: That's all.

By Mr. Graham:

[fol. 1847] Q. This pineapple that you referred to as being an outbound movement, that is the same pineapple that moved inbound to your terminal?

A. Yes, only some of it might be on storage and others of it might not be on storage.

Mr. Graham: That is all.

By Mr. Read:

Q. I didn't quite understand Mr. Geary's question on that, so I couldn't understand the answer. Just where would the complaint come from that a different charge was being made for the pineapple, the shippers or consignees?

A. Well, certainly, if you had a higher rate on one than on the other the over-all cost to one would be higher than the other, wouldn't it?

Q. Of pineapple?

A. Yes.

Q. What would cause that? I am speaking entirely of pineapple, no other canned goods.

Mr. Geary: Your question was predicated, as I understood it, on pineapple that required high-piling and pineapple which did not require high-piling. You asked if it would be possible to put two rates for that commodity on the same facility. Isn't that correct? Wasn't that the basis of your question?

Mr. Read: I thought your question referred to my ques-[fol. 1848] tion about a higher charge for the pineapple than for other canned goods. Yes, that was my question.

By Mr. Read:

Q. If a shipper or consignee of canned goods, though, Mr. Graham, had the option of choosing between normal piling and high piling and, having chosen one or the other, do you think he would have any grounds for complaint?

A. I don't think the shipper would be in a position to choose normal piling or high-piling. It is up to the ter-

minal. Of course, if you were a shipper you would always want normal piling. That has nothing to do with it. The problem is entirely in the hands of the terminal as to whether or not they can give him normal or high-piling.

Q. Oh, then it is to the disadvantage of the terminal rather than the choice of the shipper whether the goods are high-piled or not?

A. Of course it is.

Q. If you had two scales, one for normal piling and another for high-piling, with the lower floor space charge for the high-piling, because of the lesser space occupied in the course of time the rate for the high-piled would become less than that for normal piling, would it not?

Mr. Geary: You are putting in an assumption here on which there is no evidence to support it. If you want to put testimony on to that effect you are privileged to do so.

[fol. 1849] Mr. Read: I am asking him if it isn't a fact. The witness is perfectly familiar with this. He has been in this case for some time.

Mr. Geary: I agree with that and I know that, but he has definitely answered that the thing is not practicable and it is not possible from his operation. If you feel that it is possible to put a rate structure of that character in, you can put a witness on to testify to it. But the witness himself has definitely told you that it can't be done.

Mr. Read: My question is with regard to a complaint that the shipper would make that he paid more for goods high-piled than some other shipper did for goods that were not high-piled. It is not a question of whether he can put the rate in or not, and because of that I asked him whether or not it was the fact that a high-piled rate as time went on would become less than the rate for normal piling if you took into consideration the lower rate because of the conservation of floor space.

Mr. Scoll: He has already testified to that, Mr. Read, in answer to a question of mine.

Mr. Read: What was the answer?

Mr. Scoll: I asked him the same question you are asking and he gave an answer. It is in the record.

[fol. 1850] By Mr. Read:

Q. If that is the case and it is lower, would not the shipper, depending upon the time that he intended to store the

goods, make his choice between the normal piling and the high-piling?

A. I have answered that question.

Q. What was the answer, please?

A. I said that there was no possible way that the shipper would have anything to do about choosing whether he wanted it high-piled or normal. It is up to the terminals entirely.

Q. Refer to Schedule B, Sheet 1, please, line 22, "Checking cargo to or from demurrage, $3135.57." Does that expense include any checking from or to cars for which the Encinal Terminals was compensated by a railroad?

A. No, it does not.

Mr. Read: That is all.

By Mr. Graham:

Q. Mr. Graham, you have testified in response to Mr. Geary's question that you believed that you lost 20 per cent in cost space area by machine piling. I take it you meant 20 per cent of 60 per cent rather than 20 per cent of 100 per cent, because you lose 40 per cent in aisle space and so on?

A. That is correct. But it should be understood that the answer should be that you lose 20 per cent in space over [fol. 1851] the space which you used by piling by hand and in a solid pile.

Q. So that the ultimate result would be that it would be a net loss of 12 per cent or a total loss of 52 per cent?

A. Yes.

Q. And you would occupy 48 per cent of your area?

A. That is correct.

Q. Have you actually done any measurement to determine that?

A. Yes, we have.

Mr. Graham: No more questions.

Mr. Read: Mr. Geary, Mr. Scoll asked for a list of principal commodities stored. Is the Encinal Terminals submitting that?

Mr. Geary: They are not.

Mr. Scoll: I subsequently withdrew the request and made an explanation of that, Mr. Read. The request likewise was made by another witness after I made my statement

and the Examiner ruled on it and said that he wouldn't ask for it to be produced.

Mr. Read: All right.

Examiner Basham: You are excused, Mr. Graham.

(Witness excused.)

Mr. Scoll: Mr. Differding.

[fol. 1852] T. G. DIFFERDING resumed the stand and testified further as follows:

Direct examination.

By Mr. Scoll:

Q. Mr. Differding, you have been previously sworn?

A. Yes, sir.

Q. Based on your experience and your studies is it your view that a penalty charge should be assessed on cargo which remains over the free time unless the shipper notifies the terminal before the free time expires that the cargo is to be held on wharf storage?

A. Yes, sir.

Q. What is the purpose of assessing wharf demurrage on a penalty basis?

A. For the purpose of clearing the docks and following that, of course, where the facilities permit, of the terminal operator handling cargo under a storage basis which inures to the benefit of the terminal operator, the shipper as well as the steamship operator himself. That is, by attracting cargo to seaboard for subsequent movement by water or prior to subsequent movement by water.

Q. From your studies and experiences is it your opinion that the penalty charge for wharf demurrage should be uniformly assessed by all terminals in the San Francisco Bay area?

[fol. 1853] A. Yes, sir. I think that should be done, and I believe the experience of these operators over many years indicates what happens when you have one operator or more of a group of operators assessing different rates. They ultimately all come down to the lowest possible level. That hasn't been quite true with the San Francisco terminals, but they have endeavored to meet that situation by continuing

with a period basis. But the purpose was to meet the East Bay competition and/or Stockton competition by a period basis of charges for accomplishing the same purpose as the other terminals have met one another's reductions and charges over the years.

Q. Then it would be correct to say, wouldn't it, that there is competition among the San Francisco Bay terminals for this wharf demurrage cargo?

A. It is more than that.

Q. And that competition has been quite severe from your experience?

A. Yes, very keen and severe ever since they have been in operation. That is, as soon as the terminals on the east side of the bay and on the various tributaries of the bay have come into existence, they in turn have competed with each other and with San Francisco, and the tariffs as you find them today are reflecting that competition.

Q. What would happen if one of the terminals on the East [fol. 1854] Bay had a storage or a demurrage rate that was higher than that of the others on the same commodity?

A. Well, he just didn't want the business. That's the only reason he would be there. I haven't found that situation, incidentally, except on a few bulk commodities where one terminal might have a facility and could attract the business and the other terminals did not have the facility and might have had some n. o. s. charge or something else of that sort which would be less than the facility actually handling the goods.

Q. From your studies and observations of this question, can you state whether the relative size of the transit shed of any one terminal as compared with the size of the transit shed of its competitors has any bearing on the establishment of a uniform penalty charge for wharf demurrage?

A. No. It has not had, except that the finger piers of the Board of Harbor Commissioners in San Francisco, where they have had a high penalty basis of charge in effect for many years, and departures therefrom only in instances where bulkhead demurrages have been granted.

Q. Let me ask, should an exception be made in any practice or rule which might be prescribed with respect to penalty demurrage for a terminal which has a larger transit area space than a terminal which has a smaller transit area space?

A. Oh, generally speaking, no. Competition wouldn't [fol. 1855] permit it. They are all after the same business. They are all after demurrage cargo, and any difference in charges whether it is a penalty basis or demurrage basis would affect the flow of traffic.

Q. So that the size of, say, Oakland as compared with the size of Howard has very little to do with the question of whether or not the charge should be assessed on a penalty basis or not, is that correct?

A. That has very little, if any, effect. I haven't observed any.

Q. In your studies in 1935 did you make a study of the operation of the Parr-Richmond Terminal?

A. Yes, sir.

Q. Will you state whether from your studies the operation of the Parr-Richmond Terminal is typical of other San Francisco Bay terminals from the standpoint of wharf demurrage and wharf storage?

A. No, it is not.

Q. Will you explain that?

A. Well, the Parr Terminal has never in its existence presented a typical or average general cargo handling facility, that is, in all trades both inbound and outbound. They have had a considerable volume of business which could be called "General cargo" outbound for some period of time, but relatively speaking it has been a very short [fol. 1856] period of time and, I think, as the witnesses have indicated, it is limited mainly to large movements of packaged petroleum products which move out in large quantities. The territory tributary to Richmond in competition with Stockton and the East Bay and San Francisco terminals has not permitted them to secure a large part of the general cargo movement through San Francisco bay.

Mr. Read: Have not permitted who, Mr. Differding?

The Witness: Has not permitted the Parr Terminal Company to enjoy a very large share of the general cargo movement through San Francisco bay.

By Mr. Scoll:

Q. On page 108 of Exhibit 61 in this record there is a recommendation by Dr. Edwards and yourself that there be a penalty demurrage charge of 5 cents per ton until the shipper declares the goods for storage.

A. Yes, sir.

Q. In making this recommendation did you consider the ability of shippers who use the San Francisco Bay terminals to pay a penalty demurrage charge?

A. Yes, sir.

Q. What did you find?

A. From such studies and investigations that we made we could see no reason why a penalty demurrage charge of 5 cents per ton per day for the purpose of clearing the [fol. 1857] transit sheds of cargo after a period of ten days of free time was allowed in a matter of which we recommended certain reductions in, should be permitted to occupy transit space where the terminal immediately incurs certain fixed costs on that cargo and which he cannot recoup even under 5 cents per ton per day, generally speaking, having in mind where the cargo has to be moved around or in some instances high piled and the fixed charges, as indicated in the Exhibit 61, occur where there is a normal movement of general cargo; and, further, from the fact that a penalty basis has been in effect in San Francisco for many years on the piers handling the vast majority of the cargo and has been assessed.

Q. Is the penalty basis in effect and assessed at other ports on the Pacific Coast?

A. Yes.

Q. Do you know?

A. Yes. That's particularly true in the north Pacific Coast ports. They themselves set up a penalty basis of wharf demurrage charges which are covered in the various exhibits that I previously introduced in this record, and they also have a storage basis which embraces a period of time, plus a receiving or delivery charge or a handling charge.

Q. Then it is your opinion, based on your studies and experience, that the shippers who use these San Francisco Bay terminals are able to pay a penalty demurrage charge, [fol. 1858] is that correct?

A. Yes. They are able to pay a penalty demurrage charge for the few days time generally used in removing or assembling cargo which is in excess of the free time period.

Mr. Graham: You mean a charge of 5 cents, is that it?

The Witness: Yes. That's what was recommended and that's what I have in mind in answering these questions.

By Mr. Scoll:

Q. Then from your experience since 1935 is it your opinion that conditions under which you recommended a penalty charge of 5 cents have in no way changed as to make such an assessment an unreasonable burden on shippers today?

A. No, I do not. I think, under the extraordinary conditions obtaining today in many cases, there may be justification for a higher penalty charge in order to get the cargo out of transit areas.

Q. If wharf demurrage is assessed on a penalty basis would there be a differential between demurrage charges on inbound and outbound cargo?

A. You mean as to penalty?

Q. Yes, as to the amount of the penalty. Should there be one penalty demurrage rate on inbound cargo and another on outbound cargo?

A. In our investigation we found no justification for it [fol. 1859] at that time, and I am not informed at this moment as to justification for it.

Q. You mean, then, that the penalty demurrage rate of 5 cents a day should be the same on inbound as on outbound cargo?

A. Yes. I have in mind the penalty demurrage rate applying to both inbound and outbound.

Q. In your opinion, based again on your studies and experience, is it possible for any terminal in the San Francisco Bay area to nullify the effect of penalty demurrage charges by establishing low wharf storage rates?

A. Well, not if they have the storage rates at a proper level. It depends upon the basis of assessing the storage charges.

Q. Then in your opinion it is necessary to establish wharf storage rates on a basis which will prevent evasion of penalty demurrage charges, is that correct?

A. The nullification of the penalty demurrage charges by the shipper declaring it for storage could be *be* accomplished but at the same time that assures that the storage charges are on a proper level. So the terminal operator would be compensated for the space costs plus the direct and overhead costs that are incurred during the time that the cargo remains on hand.

Q. Then in order to prevent nullification of the penalty [fol. 1860] demurrage is it necessary to establish wharf storage on a period basis?

A. Well, it isn't absolutely necessary, but to compensate the terminal operator for the space provided and at the same time have a charge generally termed a handling or receiving and delivering charge to compensate for the charges or the costs which are immediately attached to the cargo, it is more desirable and, I believe, for both the shipper and the terminal operator, to have it on a period basis. We recommended a 15-day period basis and I have no justification at the moment for altering that recommendation.

Q. And you likewise recommended a handling in and out or receiving charge, did you not?

A. Yes, that is true.

Q. Have you any basis for being of a different mind today? Would you still make such a recommendation today?

A. Yes.

Q. On page 78 of Exhibit 61 there appears a table of densities and pile heights and square feet required per ton for each of the principal commodities stored on wharf demurrage by the San Francisco Bay terminals. Upon what information was that table based?

A. That table was prepared by rather long and detailed studies that I made of the various commodities piled on the San Francisco Bay docks, and by that I mean both sides, and [fol. 1861] using a measuring stick and determining the actual weight of the goods in the various piles of different commodities.

[fol. 1862] Mr. Graham: Don't you mean page 98? I think you said page 78.

The Witness: Yes, it is page 98 of Exhibit 61.

By Mr. Scoll:

Q. Can you state from your experience since the date that this table was prepared whether the data which it sets forth is substantially accurate today?

A. Yes. As far as my knowledge goes the same type of containers and the cubic density are being used, and I know of no departures from the results shown on the table of densities.

Q. Mr. Parr when he was on the stand this morning testified that the fixed charges for the Parr Terminal warehouse area had not changed substantially since 1935. Have you your work papers there that you used in 1935?

A. Yes, sir.

Q. Will you state for the record from those papers what you found to be the square foot values for the Parr Terminal areas devoted to wharf storage for demurrage?

A. Terminal No. 3, the yearly cost was .94 cents per square foot which, when it is adjusted for a 30-day basis, is 7.83 cents per square foot. Terminal No. 1, that is, the facility that is over the water or practically one-half of the total area of that facility, the cost was 98.8 cents per year with a 30-day square foot cost of 8.23 cents. And in the [fol. 1863] so-called back warehouse or the other half of Terminal No. 1 the cost was 42 cents per year or 3.5 cents per square foot per 30 days. The difference in the two parts of that building is because one is over the water and very expensive piling and the other is on filled land and not the same type of construction, one being concrete and the other terra cotta tile.

Q. And the figures which you have just read were based on actual first hand observations and inspection of records which you made?

A. It was a rather long and tedious examination of the records going back ever since these facilities were constructed by the City of Richmond and Mr. Parr and examination made of every expense that was incurred in the facilities, and these figures represent the carrying charges as of 1935 whether the expenditures were made by Mr. Parr and his organization or the City of Richmond.

Q. Do you have the total cost of the structures there?

A. Yes. No, I am sorry to say they were not carried forward on these work sheets that I have here. I will have to call upon Mr. Read who has borrowed those work sheets to get that answer. I can't get at them, I am sorry.

Mr. Scoll: Have you those work sheets with you?

Mr. Read: I haven't them with me.

Mr. Scoll: May we insert in the record that information [fol. 1864] which we can take off of Mr. Differding's work sheets? That is, the total costs of the various structures for which he has given a square foot value?

Mr. Read: That is just the structures of 1 and 3?

Mr. Scoll: Whichever structures Mr. Differding gave square foot values for.

The Witness: 1 and 3.

Mr. Scoll: That will be furnished within ten days and copies to the respondents?

Mr. Read: Yes.

By Mr. Scoll:

Q. Now, Mr. Differding, witnesses for both Parr Terminal and Oakland testified to the effect that they were of the opinion that wharf storage or wharf demurrage, using them to mean the same thing, should be based on an out-of-pocket theory rather than on a basis of cost. Would you comment on the application of the out-of-pocket theory to the wharf demurrage or wharf storage charge?

A. Well, speaking generally, if the users of wharf demurrage space are entitled to rates based upon out-of-pocket costs so are the ship operators in the payment of charges and so are the shippers in the payment of tolls. The answer is that these terminals would all fold up. They can't expend an out-of-pocket theory throughout the entire structure, and, on the other hand, the terminals have all [fol. 1865] raised their tolls, they have adjusted their dock charges and increased their service charges and they so far have left the wharf demurrage operation of their facilities still standing but not carrying its way, which is quite evident from these formulas that have been introduced here.

There are very substantial increases necessary in these charges to compensate the terminals even on a minimum basis, and back in 1933 we found, using the low cost facilities both as to direct and overhead expenses as well as floor space, that a minimum of 33-1/3 per cent increase was necessary and that also took into consideration the reduction in free time which we assumed would result in a 10 per cent increase in the amount of wharf demurrage over the year's operations.

Q. I used the phrase "out-of-pocket theory", and the same thing would apply to any other expression of that accounting theory, such as "added traffic" theory, which presumably sometimes means the same thing?

A. Yes.

Q. And I meant it the same way.

A. Yes. They are all taking a cue out of the railroads' books over the years and it hasn't worked very well for the

railroads and it can't apply to the terminal operation to any degree because they are set in one spot and they have limited traffic to go after and they are not in the position of [fol. 1866] the railroads to be attracting new traffic. If it is attracted it will just be shifted from one around to the other. If they all go down on the same basis, which is inevitable under the competitive situation, they wind up with less revenues and no traffic.

Speaking of costs, it is true that it is only one element, the other ones being what the traffic will bear and, the third, competition.

Q. If the element of competition and the element of what the traffic will bear can be set aside as being equal so that you have only to look at the matter of costs, what in general is the effect of furnishing wharf storage or wharf demurrage at a rate which is not compensatory?

A. Well, the answer generally, I believe, is casting a burden upon the other users of the facilities, which in this case means the vessels and those shippers who have transit cargo and do not take advantage of the wharf demurrage space. Where the charges are on a compensatory basis it permits the terminal operator to meet various situations. By that I mean the contentions of shippers that certain traffic can not pay its way and some relief can be accorded to certain commodities that the steamship companies may desire a reduction in service charges, but when the terminal operator is not being fully compensated for his services he is not in the position of granting very much consideration [fol. 1867] to those requests. And it is also obvious that under these figures shown here, which after all are averages, there are going to be a number of commodities that probably can not stand thier full share; and what they can't stand, if the service is going to be on a compensatory basis, must be added to those commodities that can.

Q. Now, Colonel Allin in a statement which he read in part this morning said that the land carriers should be assessed a part of the cost of the operation of the terminal and implied that their share should be reflected in the cost of wharf demurrage or wharf storage. What have you to say about that?

A. Well, I don't recall that he said it should be reflected in wharf demurrage or wharf storage. I believe he was attempting to point out that all users should pay their fair

share, which I heartily agree with, departures being made only for sound justification. But the cost of furnishing facilities especially for trucks or especially for railroad lines is not embraced in wharf demurrage. It is like a lot of other costs that these terminals incur, and revenues they receive are not involved h-re. There was quite an extended discussion in Exhibit 61 as to the determination of costs for the uses made by railroads and truck carriers of terminal facilities. At that time we made such cost study as was possible and found that under the then existing situation and [fol. 1868] the information and figures available to us that we could not justify any cost or charge, rather, to the truck carriers or the railroad lines presently using the facilities that we had then investigated. Whether the picture has changed today to such an extent as to warrant that, I am not in a position to say. But that is not a matter that is involved here.

Q. Based on the studies which you made in 1935 and what you have ordered about terminal practices in San Francisco Bay since then, when in your opinion should the cargo owner elect between daily and period basis of storage?

A. Well, it was recommended that it should automatically go on storage after the fifth day of the penalty charge unless the shipper had previously indicated that he desired the storage basis. And I see no reason to change that recommendation at this time.

Q. Why was that recommendation made?

A. Well, it is a charge that is almost impossible to police because the numerous people that are involved in referring these requests for the—that would receive these requests for the basis of storage. The shipper in making that request obviously has some idea as to the length of time that he contemplates on having it there. If you had it for a period much longer than five days the shipper would be taking advantage of the terminal operators, I am afraid, in asking that the penalty basis be entirely eliminated and the [fol. 1869] storage basis applied upon the expiration of the free time period, and the longer you have the penalty basis the more reason there is to nullify that by extending the storage basis back to the expiration of the free time period. In any event, if you do not have an automatic storage arrangement the terminal operator is in many cases not compensated for the charges that he has to bear in connection

with the cargo under a penalty charge, and in order to permit the terminal operator to within a reasonable period of time, as we saw it, get sufficient to pay his out-of-pocket costs plus something for space expenses, we believed at that time that after the expiration of five days it should automatically go on to storage.

Q. Now, from your experience and observation of the operations of the San Francisco Bay terminals since the date of the report embodied in Exhibit 61, will you state whether there has been any change in conditions which would warrant a change in the recommendations which were made in that report by you and Dr. Edwards?

A. There may be, but I know of none so controlling as I would recommend a change in what was originally recommended.

Q. So that what you said then is still good today?

A. Yes. I have no information that would lead me to amend or revise those recommendations at this time.

Q. You have kept pretty good touch with the operations [fol. 1870] of the terminals since the date of that report, have you?

A. I think so, without actually working for them.

Q. By the way, Mr. Differding, you are testifying under subpoena here today, are you not?

A. Yes, sir.

Mr. Scoll: That is all.

Cross-examination.

By Mr. Graham:

Q. Mr. Differding, as I understand it, your basis of establishing this demurrage rate is predicated solely on the belief that it should be a penalty?

A. As far as the five cents per ton per day basis is concerned; yes, sir.

Q. That is what I mean.

A. Yes, sir.

Q. I also understand that you would recommend the adoption of the 5-cent rate both in inbound and outbound cargo?

A. Yes, sir.

Q. You appreciate the fact, don't you, that on inbound cargo the terminal is in a position where it may or it need not accept that cargo and, consequently, there is no need

for a penalty to so-called clear the dock? Would that have some influence in your determination that the one rate might be different than the other?

A. Not that, Mr. Graham. Competition doesn't permit [fol. 1871] you to refuse anything.

Q. Well, if you had the same rate at all terminals, which is presumed that this hearing may bring forth, the element of competition would be eliminated, wouldn't it?

A. Well, not in so far as one terminal turning down business. I have never heard of that.

Mr. Scoll: There is another competition besides competition in rate.

Mr. Graham: Yes, I understand that.

By Mr. Graham:

Q. But, in other words, it would be your belief that this 5-cent rate for outbound cargo even though all the terminals apply the same rate, be it lower than the 5 cents, that your docks would still clog up by reason of competition between the docks?

A. Well, no. It is true that a terminal operator can have more influence in regulating the flow of the outbound cargo to the dock than he can from the—than the inbound cargo off the dock.

Q. That is right.

A. He can through his close association with the shippers—he can do that, but if the shipper says that "I am going to send it down there," the terminal operator never says "No."

Q. Then if that is your belief the result is that that 5 cents becomes not a penalty but a revenue rate?

[fol. 1872] A. That is true. However,—

Q. (Interrupting) On outbound cargo?

A. Yes. Well, to the revenue on inbound too.

Q. I understand that.

A. But that isn't the function of the penalty charge.

Q. I understand. But, in other words, it is correct that this charge of 5 cents which you propose is based primarily on the desire to have a penalty?

A. Yes, sir.

Q. And you do recognize, however, that there is a distinction in the situation confronting the terminal as to inbound cargo compared to outbound cargo?

A. Yes. The shipper is in a better position to use his influence in regulating the flow of cargo on the dock than the cargo from the dock.

Q. That is right. So that upon outbound cargo the primary concern of the terminal in accepting the cargo is the revenue that the terminal gets from accepting the cargo?

A. Yes, that is true. But, again, the terminal operator is up against the same problem as he has in the inbound cargo in that large quantities of commodities are received for outbound movement by water, where the terminal operator immediately incurs certain costs which are not compensated for; and unless—and if the cargo should move out in a few days, unless you have a high penalty charge, the terminal operator again suffers the loss which is amply [fol. 1873] illustrated in these formulas here today. They are occurring on all cargo.

Q. I understand that. And is it your opinion that this 5 cents on outbound cargo is to be considered as a compensatory rate to satisfy the costs of the terminal in handling that outbound cargo?

A. Yes, sir. Those costs—for example, square foot costs are exactly the same whichever way the cargo is moving.

Q. That is right.

A. And unless the terminals devise a rate structure which is fair and reasonable and at the same time of such a compensatory nature as to cover all costs, they are going to be just short of whatever the amount necessary is.

Q. But we are agreed, are we not, that the basis for the charge on inbound cargo is different than the basis for the charge on outbound cargo in that on inbound cargo your desire, according to you, is to clear your terminal, where on outbound cargo the terminal has the discretion as to whether it is going to take the cargo or not, but if should get a rate which is compensatory?

A. That is right. He has that discretion, but he can't exercise the discretion.

Q. Why can he not exercise the discretion if the rate in respect to all these terminals as a result of this hearing [fol. 1874] is identical?

A. The point that I have is this: That if the charge is lower than the compensatory charge——

Q. (Interrupting) Now, I am agreeing with you that we have a compensatory charge for outbound cargo for this service.

A. All right. But the only way that the terminal operator can have a permanent deterrent as far as the shipper is concerned against having cargo on hand for a few days beyond the free time period is by having a penalty charge. If the terminal wants to, or if the shipper wants to store it there for a period of time he should be forced to pay a reasonable charge for the use of that facility, and at the present time the whole risk is assumed by the terminal operator and he hopes that he is going to come out whole. Well, the evidence is quite ample five years ago as well as today that he has never come out whole.

Q. I understand all of that. Let me go back to it again. Is it not a fact that the terminal on outbound cargo has it within his power where there is no question of competitive rates, the rates are the same, to accept the cargo or not to accept it? That is a fact, is it not?

A. Oh, he has that.

Q. That is right.

A. But competition doesn't permit him to do it because [fol. 1875] there is always some terminal operator who will accept it, and if the shipper wants it to go down to the dock it is going there and they all know it. It is part of the business.

Q. You are famliar with the rates charged in the Northwest, which were covered by Mr. West's testimony. I think you heard that, did you not?

A. Yes, sir.

Q. Those are different than rates proposed by you, aren't they, not only in amount but also on the basis of application?

A. Yes. I am not quite clear at the moment just what those rates are.

Q. They are 2 cents as distinguished from your 5 cents?

A. Yes.

Q. You heard Mr. West's testimony that both on the rate itself and its application, which is different than your application, they had in practice found satisfactory results. Do I understand that you either don't know enough about the situation in the Northwest or you differ from their view? Now, which is it?

A. No. I have no quarrel with Mr. West's comments at all. I am recommending here what was found five years ago and at the present time I have no information of sufficient or controlling importance to change it.

[fol. 1876] Q. And you don't know any factors which would govern a moment of cargo in the Northwest which are any different than those here, do you? They have the same problems that these terminals have?

A. Generally speaking, yes. But in so far as wharf demurrage alone is concerned and the various elements that go into the matter of costs and revenues, I couldn't say.

Q. You do recognize, don't you Mr. Differding, that there are different facilities afforded in the San Francisco Bay area and that the rule which might apply on a strictly transit pier, such as the San Francisco piers, might not be applicable on other piers or other facilities which have more space available for short term storage?

A. No, not particularly. The costs are there, and if they are handling it in short term storage and they know it as such they don't, for example, encounter high-piling but they spread it over a greater surface of the docks area and, as pointed out, the costs meet each other on a number of these commodities within thirty or forty days.

Q. I understand that. But in that respect it is a fact, isn't it, that your recommendation for 5 cents is based upon the belief that this cargo should be penalized rather than on a determination of what the costs of handling are?

A. No, not at all. We have set up a basis here to cover storage arrangement, and if the cargo is only going to stay [fol. 1877] on hand three or four or five days it is clear, I think, from the formulas that have been submitted that the terminal operators never come out whole on it.

Q. But is it not a fact that the application of the 5-cent rate exceeds the sum which would be necessary in order to satisfy strictly the costs of operation on a particular facility as distinguished from a penalty?

A. Well, if it was run through for any period of time that is true. Generally speaking, there are some exceptions. Some illustrations are found here in this Exhibit 61.

Q. So that if you were concerned with the question of a compensatory rate alone your recommendation, I assume, would be to propose a charge something less than the 5 cents which you have proposed as a penalty charge?

A. No, not without further information than I have today on the subject.

Q. Well, it is your information, is it not, that the 5-cent rate exceeds a compensatory rate?

A. No, not on the average.

Q. Well, it certainly does on outbound cargo.

A. Without breaking down these figures on a daily basis with all the costs incurred I wouldn't say so. That can be determined, I think.

Q. What you mean is that you just don't know, or —

A. (Interrupting) These rates here are set up on a dif-
[fol. 1878] ferent basis and if you are going to allocate your cargo to one day, two days, three days, over a year's operations and all of the incidental charges such as handling, transferring, high-piling and the rest of it that are incurred, regardless of the fact that the cargo may stay only three or four days or five days at a five-cent per ton per day, the ultimate answer is I haven't that basis worked out. I can't tell you. But for the purpose of a penalty demurrage charge to clear the docks and not take advantage of a very low per diem rate, it appeared to us five years ago that a five-cent per ton per day charge in both directions was fair and reasonable and, as I previously stated, I am not in a position to revise that upon any more recent information.

Q. And you are not in a position to revise in respect to the question of whether that is or is not strictly a compensatory rate?

A. Well,——

Mr. Scoll: (Interrupting) Let me ask you this: You have reviewed the evidence and the exhibits that have been introduced in this case, have you not?

The Witness: Yes.

Mr. Scoll: Have you seen anything in the record of this case so far that would indicate that five cents is more than a compensatory rate?

Mr. Graham: The reason I asked that question is be-
[fol. 1879] cause of the fact that there has been testimony introduced in this case, both at this hearing and in the previous hearing, by actual terminal operators which is slightly at variance with your views on the 5-cent rate.

Mr. Scoll: Those have been statements unsupported by anything more than merely the statement of the operator who made it.

Mr. Geary: Did the witness answer the last question?

Examiner Basham: Read the question, please.

(The question referred to was read by the reporter as above recorded.)

The Witness: No. Their figures, whatever they put in, are like mine. They are largely judgment, and I am quite sure that none of these operators have had time to break these figures down to do that. As a matter of fact, it would require analyzing every ton as to the specific number of days throughout the entire year that remained on hand and then try to analyze those tons for each day back against your costs. Your costs can be broken down, as indicated here, for 365 days of the year or weekly or any period you want. But to state definitely that it is compensatory or not compensatory I think is not possible at this time from the information available to me or any of these operators. [fol. 1880] But I think it more closely approximates being a compensatory charge if it does not exceed it than anything else that you may have.

By Mr. Graham:

Q. So what we finally come down to is the exercise of your judgment and the exercise of the judgment of the witnesses who have testified in other respects?

A. That is right.

Mr. Scoll: It is an analysis of testimony and judgment based upon testimony in the record, isn't that correct?

The Witness: I think it could be stated this way: That my statement with respect to a penalty demurrage charge and that of all the other witnesses who have touched upon it is their best judgment based upon their observations and what study they have given of the costs. That's mine. To accomplish the purposes intended by a penalty wharf demurrage charge, which is to clear the transit sheds and not use the valuable space for periods of time where the revenues under the existing rate structure is not compensatory:

By Mr. Graham:

Q. And if the terminal has sufficient space where there was not the need for clearance as there is, let us say, at the

San Francisco finger piers you would have to, would you not, first determine what your compensatory rate was [fol. 1881] rather than establish this so-called penalty rate?

A. No. At the San Francisco finger piers the penalty basis was from my investigation never adopted or viewed in the light of a revenue producing charge. It was there for the purposes that the word "penalty" implied.

Q. Whereas on some of the other terminals around the Bay, which have more space available, revenue plays an important part in this problem?

A. Yes. Witness the two San Francisco piers No. 45 and 56 and the East Bay terminals. They were built definitely for the handling of cargoes for periods of time, and properly so. Whereas the finger piers are the old type and they are under assignment by a steamship operator who has no interest whatsoever in wharf demurrage cargo and he can't be blamed for that.

Q. As I understand it, Mr. Differding, you are still of the opinion that the rule on Appendix E, I think, covered by the note on Appendix E, should be made applicable and the 15-day period should govern?

A. Yes, I still have that opinion.

Q. Now, is it not a fact that if that were put into effect the shipper who for any reason, either those within or beyond his control, had goods remain on the facility beyond the 5-day period, which I think you suggest, even for one day he would be obligated to the charge for the entire additional [fol. 1882] 14-day period even though not used?

A. Absolutely.

Q. And isn't it a fact that on those facilities, on which you have suggested there is a need for 5-cent penalty rate in order to clear them, that the effect would be just the opposite of what you have suggested should prevail, namely, that the fellow would leave his goods there for 14 days on storage and the facilities wouldn't be cleared at all?

A. Absolutely. That's just what has happened and that is just what the terminal operators apparently built their facilities for, and at the same time they would be compensated for the use of it, which, after all, I think is one of the objectives.

Mr. Scoll: I don't know whether you understood the import of Mr. Graham's question.

Will you read Mr. Graham's question back again and the witness' answer?

(The question and answer referred to were read by the reporter as above recorded.)

Mr. Scoll: As I understand,——

Mr. Graham (Interrupting): Now, just a moment! Please don't lead this witness because I think the witness understands clearly the question I asked him, and I think the answer is responsive to the question I have asked. He [fol. 1883] is an expert witness.

The Witness: I just answered it the best I know how.

By Mr. Graham:

Q. Mr. Differding, going on to that same question, if the purpose is to clear these facilities, which you have suggested it is, a daily rate would be more preferable to a 15-day period rate under those conditions? A "continuation of a daily rate", let us call it.

A. Yes. But the point is that if you are going to break down your period basis to a daily basis plus a receiving and delivering charge, you are going to have more gaps of time in there because you are permitting the shipper again to do on a storage basis, which is adjusted to ordinarily for periods of time to move his cargo in and out as he sees fit.

Q. I don't think you heard my question, or you did not understand it, if you did hear it. I wonder if you would read it again, Mr. Reporter, please.

A. Well, I think I understand your question all right enough. If you didn't get the answer you wanted you will have to reframe it.

Mr. Graham: Read the question will you please, Mr. Reporter?

(The question referred to was read by the reporter.)

[fol. 1884] By Mr. Graham:

Q. That is a fact, is it not, Mr. Differding?

A. (No response.)

Q. Maybe I don't make myself clear.

A. No, the purposes are different. You are now a step beyond the penalty basis to a storage basis and you are being compensated for your fixed costs that ordinarily accrue

when the cargo first hits the dock or after the period of free time, rather, is what it should be. Of course, the ideal situation is for the terminal operators, of course, to have compensation immediately after the expiration of the free time for all the fixed costs that immediately attach itself to each ton of cargo after the expiration of the free time.

Q. Well then,——

A. (Interrupting:) That is not possible, I believe in fairness to the shippers and the consignees involved, because they can not always be in a position of immediately after the expiration of the free time to have their cargo off the dock. They may have removed 50 per cent or 90 per cent of it within the 10 days and have 10 per cent left, and it did not appear fair to us, and I know that it has never appeared fair to any of the terminal operators or numerous other parties that we discussed, that that man should immediately be stuck with the receiving and delivering charge like it is [fol. 1885] in a public warehouse. And for that reason, where that shipper does not go beyond the, or consignee, beyond the 10 days free time he has a penalty charge which is no wise equal to what would happen under a period basis with a receiving and delivering charge. So he does have the privilege of getting it off of there in two, three or four or five days, whatever he may take, and the picture is different. He wants a period of time he can work out the storage basis to fit his problem.

Q. That is by the exercise of his own discretion?

A. I beg your pardon?

Q. That is by the exercise of his own discretion?

A. Yes. After all, he knows his problem.

Q. That is right.

A. The terminal operator doesn't and the terminal operator gets paid for it, not the shipper.

Q. If what we are talking about is a penalty charge to clear the facilities, is it not a fact that continuation of a daily penalty basis would be preferable to a daily basis for a period of days and then automatically go on a period basis? Can we agree on that?

A. Without a receiving and delivering charge, do you say?

Q. What does your rule provide for? I am talking about the application in your rule.

A. Yes. That could be done that way, but you would [fol. 1886] again permit the shipper to be withdrawing the cargo without having an equitable spread of all your space costs over a period of time. You would have bigger gaps in there because the shipper would immediately, if he was just paying a handling charge—he might leave it there five days beyond the payment, if the payment was put on a basis where the receiving and delivering charge is involved, and the terminal operator would have idle space. The cost is there and it has to be recovered somehow. And it may be true, as you say, that the shipper is going to be stuck with a 15-day period basis plus a receiving and delivering charge and would endeavor to leave it there as long as possible. Obviously his costs per ton go down. The next shipment he may have he would pull it out in five days. But when you analyze the situation, as some large storage accounts that we analyzed upon our basis here, we found that those that we did analyze would work out to the shipper's advantage.

Q. Can we agree upon this: That the application of the rule suggested by you would not have the effect of clearing the facility?

A. Well, certainly not when it is on a storage basis because that is what it is designed for and that is why they have accepted it.

Mr. Graham: That is all.

Mr. Scoll: That is on a storage basis as distinguished [fol. 1887] from a penalty demurrage basis?

Mr. Graham: What I am talking about, Mr. Scoll and Mr. Differding, is the application of the rules suggested by Mr. Differding in the Appendix to Exhibit 61, I think it was.

Mr. Geary: That is not an exhibit in this case.

Mr. Graham: No, that is not Exhibit 61. It is the Appendix attached to the decision in case No. 4090.

The Witness: Appendix E.

Mr. Graham: Appendix E, yes. That is what I am talking about.

Mr. Scoll: That rule provides, does it not, for a penalty charge of 5 cents per day for five days? Let me see it, please.

The Witness: Yes, sir.

Mr. Scoll: And thereafter a period storage basis?

The Witness: Unless the shipper declared for storage prior to that passage of five days.

Mr. Scoll: If I understand the answer to your question it was that so long as the cargo is on the period storage basis after the cessation of the penalty storage base and the election by the shipper to keep it on the storage basis, then the period rate does not have the effect of clearing the docks?

[fol. 1888] Mr. Graham: That is right.

The Witness: That's right. It shouldn't have because the shipper is then being charged the rate, or should be charged the appropriate rate, to compensate the terminal operator for the facilities furnished him.

By Mr. Graham:

Q. Just one more question. The exact same result would happen in the event that the shipper had a choice as to the application of the daily so-called penalty rate or period storage rate?

A. Well, that is true, Mr. Graham. After all, it is a matter of degree of refinement here. If you break it down to seven days you again favor the shipper. If you break it down to five days you favor him a little more. If you make it thirty days, why, you favor the terminal operator more. We felt that out of all the suggestions and the cost figures that were confronting us that the 15 days for a storage basis would be as equitable to the terminal operator and to the users of wharf demurrage services as we could develop from our investigation.

Mr. Graham: That is all.

By Mr. Geary:

Q. And if the terminal operator wanted to definitely clear his docks of all cargo he can exercise the rights which he had under his tariff to that at the present time, is that not [fol. 1889] true?

A. Oh, yes.

Q. And if he does that he won't move another pound of cargo presumably for that consignee; he puts the consignee in that particular fix, isn't that likewise true?

A. Yes. They don't have any monopoly on the business and the shippers have many choices and they are not hesitant to do it.

By Mr. Read:

Q. In other words, if the terminal raises the rate high enough there won't be any storage?

A. That is one way of doing it, and the other thing is to refuse to accept it. However, the raising of the penalty rate does not mean that the terminal is foreclosing himself from storage.

Q. I take it, Mr. Differding, that you don't subscribe to the out-of-pocket theory of making rates; that is, a rate that will pay out-of-pocket plus some contribution toward overhead?

A. Not generally speaking. There — cases where that is true, certainly, and they have them in their tariff today.

Q. Are there some cases where you believe in that policy?

A. Yes; where these terminal operators are in a position of sometimes influencing cargo between land carriers and water carriers or where the traffic absolutely will not bear [fol. 1890] any more than that.

Examiner Basham: We will take a short recess.

(A short recess was taken.)

By Mr. Read:

Q. So, Mr. Differding, when the Railroad Commission set the 5 cents per ton per day demurrage rate proposed in the note on page 99 of Appendix E of the Order, did they consider that that rate per day compensated the carriers fully for the expense incurred during the time the goods were on the dock?

Mr. Townsend: Just a moment! I object to that question. This witness does not know what the Railroad Commission thought.

By Mr. Read:

Q. I will ask you if it is your opinion, then?

A. That it was fully compensatory?

Q. Yes, that it fully compensated the terminal operators for the expense they were put to because the goods were left there for, say, one, two, three, four or five days?

A. No. The matter of full compensation for penalty storage was not the objective, and in certain types of cargo

that may be the result. Generally speaking, I don't think it was fully compensatory.

Q. Now, will you look at page——

A. (Interrupting:) Particularly where it is, as here, held [fol. 1891] down to five days.

Q. Will you look at page 102 of the final report, Illustration No. 1?

A. Yes.

Q. There you computed the total cost per ton to the terminal on canned goods not high-piled for a 60-day period?

A. Yes.

Q. What would the cost be for a 30-day period?

A. Well, it is just a matter of calculation.

Q. Would you substitute 917 for 1834 and 52.54, or 26.27 for 52.54 and compute what it would be with a cost of 50.04 per month?

A. 50.04 cents per ton, that's right.

Q. And you arrive at that by dividing by two the 18.34 cents in the fourth line and the 52.54 in the fifth line?

A. That's right.

Q. The other items not changing because they are constant?

A. That's right.

Q. By that same procedure, if you considered thirty days a month and divided 9.17 and 26.27 by 30 you would arrive at the cost per day, would you not?

A. That's right.

Q. And if you did that would not the cost be much less [fol. 1892] than 5 cents per ton per day?

A. It should.

Q. Then the 5 cents does fully compensate the terminal operators for the expense for each day?

A. Oh, no.

Q. Why?

Mr. Graham: I think he already testified that it did compensate him.

Mr. Read: He said that it didn't. He said it was not fully compensatory.

A. Now, you are all putting plenty of construction on my statements.

By Mr. Read:

Q. I will ask you again, Mr. Differding, Did you consider the 5 cents per ton per day described in the note in Appendix E would fully compensate the terminal operator for the costs created by leaving the goods on the dock for the first, second, third, fourth or the fifth day?

A. The answer is, No.

Q. Why?

A. Well, you are trying to compare a specific commodity here with an average penalty charge to apply on everything. The next one you might find—for example, take sanitary napkins—you will probably find it doesn't begin to compensate for you. You picked out canned goods. It probably [fol. 1893] will.

Q. Let us confine it to canned goods, which is the example on page 102.

A. Now,——

Q. (Interrupting:) At 5 cents per ton per day on canned goods would the terminal operator be fully compensated for all expense for each of the first five days that the goods were left on his dock?

A. Based on this specific floor space and answering your figures are right, breaking it back to one day or two days or three days, that may be the answer in this specific case. But you are comparing different things.

Mr. Scoll: What difference does it make whether it is compensatory or not, Mr. Read?

Mr. Read: I want to find out, Mr. Scoll.

Mr. Scoll: He has testified that the rate ought to be on a penalty basis without regard to whether it is compensatory or not, and then on close questioning he said that he thought it possibly might be compensatory in some cases. What difference does it make whether it is compensatory or not?

Mr. Read: It makes this difference, Mr. Scoll: That the formula prescribed by the Commission on the sixth day would make a drastic increase in the storage charge. Now, if the terminal is fully compensated for each day that [fol. 1894] the goods remain on the dock under the 5 cents per ton per day, I want to know what the justification is for a sudden increase in the charge on the sixth day.

The Witness: Well, of course, as I explained a while ago, based upon costs alone the ideal situation is to slap on

your fixed costs right after the expiration of the free time period the first day. And then you have got everything that you are entitled to. Well, I have explained the reasons why we didn't think that was proper, and to us it appeared that five days was a reasonable time for a shipper to remove his cargo from the dock after the free time period on a penalty basis. If he desired something else he should be permitted to store it there at a compensatory storage rate.

By Mr. Read:

Q. Well, now, let us get back again to this illustration No. 1 and stick with canned goods, which is the commodity.

Mr. Scoll: Mr. Read, we can clear this up very simply. We are talking about two things here. One is penalty demurrage and the other is storage. Mr. Differding has stated that it is his view that penalty demurrage is a charge which is assessed with the idea in mind of getting the cargo off the transit space, and that wharf storage is something else, and that is for the use of the space. Now, that is the theory that his testimony has followed. Now, as far as your ques-[fol. 1895] tion about raising the storage rate by increasing the present rate to a penalty demurrage rate, that is just what the purpose of the increase is, of course.

Mr. Read: That is not my question at all, Mr. Scoll.

By Mr. Read:

Q. What justification is there, Mr. Differding, for the drastic increase that would result on the sixth day provided that the owner of the goods himself did not request period storage?

A. So the terminal operator would be in a position of getting back his costs.

Q. Well then, we will get back to this question: Does he get his costs at the 5 cents per ton per day on canned goods when you use the calculations in Illustration No. 1 on page 102 of the final report?

A. Well, of course, the answer is that he would not keep it on the penalty basis. He would put it on the storage basis for a period of time, if the recommendations were put into effect.

Q. Who would?

A. The shipper.

Mr. Graham: That isn't the answer to the question.

By Mr. Read:

[fol. 1896] Q. That is not the answer.

A. Maybe I misunderstood you. Would you mind reading it again? I am sorry.

(The question referred to was read by the reporter.)

Mr. Scoll: That has been answered before. Mr. Differding made the statement that there are all sorts of refinements and what they are endeavoring to do is to try to work out an equitable adjustment between the interests of the shipper and the terminal operator, and that that is what the recommendation would produce.

Examiner Basham: Do you object to the question?

Mr. Scoll: He testified to that a half dozen times.

Examiner Basham: Do you object to the question?

Mr. Scoll: Yes, I object.

Examiner Basham: I sustain the objection. Go ahead.

By Mr. Read:

Q. Mr. Differding, I understand in setting up these items of expense to determine the cost of handling goods under demurrage for storage you took certain factors at different terminals using the load factor. I understand, for instance, that your space factor was predicated upon the Howard costs?

A. That's right.

Q. And that your working expense was calculated on the [fol. 1897] performance at the Encinal Terminals?

The Witness: Will you read that last question?

(The question referred to was read by the reporter.)

Mr. Townsend: I want to object to this line of questioning. Isn't that all set forth in an exhibit in this case in your report?

The Witness: That is. The lowest cost figures are set forth, but the report itself does not state who the terminal operators were. But this has all been stated in the previous hearing.

Mr. Read: All right.

By Mr. Read:

Q. Did you make a calculation at the Parr Terminal to determine what the cost was at that particular terminal

for clerking goods when they went into storage or were under demurrage, and did you determine whether they rehandled goods or moved them from place to place on the terminal when they remained beyond the free time?

A. Well, the answer is this: Parr Terminal is not a typical picture of a general cargo terminal. Whatever we found at Parr Terminal could not be used as that which would apply where a normal operation was occurring. The point is that what business they were doing at the Parr Terminal in 1935 resulted in a loss for the wharf demurrage alone of ten thousand, nine hundred and some id dollars. [fol. 1898] And I think you have already produced an exhibit here showing what the revenues were. I don't recall it, whether you introduced an exhibit showing the tonnage at that time. But the costs for space at Parr Terminal are so high that, while I haven't the calculations all worked out here, you offset what you may save in the lack of checking or not having so much overhead expenses both fixed and variable as these other terminals. So you are saving as the latter is wiped out by the former, that is, namely, the space costs and you don't present a typical picture. Certainly, if costs were applied in the Parr Terminal operation, why, you just wouldn't have any business. Nobody would be there to pay them.

Q. You mean to say, then, that through the past five years Mr. Parr has been losing money in operating his terminal?

A. I am talking about costs to Mr. Parr and the City of Richmond.

Q. Well, Mr. Parr is the terminal operator. He is the man who has the money invested.

Mr. Scott: I object to that. We are talking about wharf demurrage.

Mr. Geary: I object.

Examiner Basham: Sustained. Off the record.

(Remarks outside the record.)

Examiner Basham: Back on the record.

[fol. 1899] By Mr. Read:

Q. Mr. Differding, if the Parr Terminal is losing money for demurrage and storage services under the present rates and an increase is made in those rates which causes this storage and demurrage to cease and Mr. Parr continues

rendering the other services, would he be better off or worse off?

Mr. Geary: What difference does that make?

A. I think the answer is obvious.

Mr. Geary: Just a moment, Mr. Differding. I object to the question. Obviously the thing is a self-answering question and it is something that he can use if he wants to until the cows come home in his brief.

Examiner Basham: Sustained.

Mr. Read: That is all.

Mr. Townsend: I have one question.

By Mr. Townsend:

Q. Mr. Differding, you stated earlier in your direct examination that the various terminals on the San Francisco Bay are in competition with each other. You failed to mention Stockton. Would you say that the Port of Stockton and the various San Francisco Bay Terminals are in competition with each other in the various terminal activities?

A. On a considerable amount of the traffic involved, yes; [fol. 1900] just as keen as the terminals here.

Mr. Townsend: Thank you.

The Witness: That is, as between themselves.

Mr. Townsend: That is all.

Redirect examination.

By Mr. Scoll:

Q. Mr. Differding, based on the exhibits showing costs which have been introduced in this record and the testimony which you heard on competition and other factors that affect wharf demurrage or wharf storage, is it your opinion that the wharf demurrage or storage charges, whichever they may be called, which are now made by the respondents in this case are too low and should be increased?

A. Yes, sir. I think they should be increased to a compensatory level wherever possible, and where that can not be done there should be justications for it. That is based upon the fact that these operators have called upon all

other users of their service to pay to the best of their ability, and I think the same thing is true of those who are using wharf demurrage services. One of the prime justifications for that is to avoid casting further burdens on other traffic.

Q. Has there been any testimony introduced in this record up to now which would lead you to make different recommendations concerning wharf demurrage and wharf [fol. 1901] storage than were made in your final report and subsequently incorporated in the decision of the California Railroad Commission?

Mr. Jones: Mr. Examiner, I want to object to that question. That purely arrogates to this witness the determination of the entire issue before the Commission.

Mr. Graham: I would like to join in that objection.

Examiner Basham: Overruled. I think the question has been answered, though.

Mr. Geary: Answer it.

A. My remarks would be the same if they were made today except that the various items shown for the specific commodities would be adjusted to fit these costs and further consideration given to such changes in competitive conditions or other factors which may have entered the picture during the intervening five years.

By Mr. Scoll:

Q. What competitive factors do you have reference to?

A. Well, principally, as far as competition is concerned, water transportation versus rail transportation. And I should have added any changes in what the traffic could bear.

Q. Have you any testimony to offer with respect to either of those factors?

A. No. I have no information that would justify me in [fol. 1902] recommending to the Commission at this time.

Mr. Scoll: That is all.

Recross-examination.

By Mr. Read:

Q. One more question, Mr. Differding, you heard Mr. Engel's testimony with regard to the petroleum products?

A. Yes, sir. I am quite aware of that situation.

Q. The conditions under which the cargoes happen to remain on the docks?

A. Yes, sir.

Q. For that reason and considering the amount of the tonnage do you or do you not think that a penalty of 5 cents per ton per day would be a pretty severe penalty?

A. Yes. I know it would be and, as I have inferred at least if not directly stated, this is the average and general picture as we found it. Now, there are exceptions to everything, and I grant you very gladly the exception on petroleum products. I am thoroughly familiar with the handling of it and I see no reason why you should not receive special consideration on that.

Mr. Read: That is all.

Examiner Basham: If there is nothing further you are excused, Mr. Differding.

(Witness excused.)

Mr. Scoll: Mr. Examiner, I believe that finishes the [fol. 1903] testimony that I have to offer. I don't know whether the Respondents have any additional testimony to offer in this proceeding or not.

Examiner Basham: Is there any further testimony to be offered?

(No response.)

Mr. Scoll: And I would like to state for the record that the Respondents have been most cooperative in going to the trouble of making statements and working up schedules from the records in the short time that was available, and I want the record to show my appreciation for that cooperation. Also I would like the record to show that on or about October 31st I shall prepare and serve on the Respondents a request for findings and rulings of law. That is, I will prepare such a request for the Commission and serve Respondents with copies in order to set the issues in the case and make it a little easier to prepare briefs.

Mr. Jones: For the purposes of the record I would like at this time to move you that the Commission dismiss this proceeding as to the Respondent Board of Port Commissioners of the City of Oakland.

Examiner Basham: The motion is denied.

Mr. Kilkenny: Mr. Examiner, I now move that this proceeding be dismissed as to the State of California and the [fol. 1904] Board of State Harbor Commissioners for San Francisco Harbor, Respondents herein.

Examiner Basham: Both motions are denied.

(Remarks outside the record.)

Examiner Basham: Briefs will be due November 20.

The hearing is closed.

(Whereupon, at 6:55 P. M., October 9, 1940, the hearing in the above-entitled matter was closed.)

(Here follows 1 photolithograph, side folio 1905.)

FORM NO. 28

PETITIONERS' EXHIBIT No. 3
EXHIBIT No. 1

BOARD OF STATE HARBOR COMMISSIONERS FOR SAN FRANCISCO HARBOR

SAN FRANCISCO, CALIFORNIA

ASSIGNMENT OF SPACE No.

Date

To Address

Kind of privilege Location

CLASSIFICATION

1—Foreign . . . . . .
2—Intercoastal . . . . . .
3—Inland waterways . . . . . .
4—Coastwise . . . . . .
5—General office space . . . . . .
6—Ferry slips . . . . . .
7—Concessions . . . . . .
8—Land or seawall lots . . . . . .
9—Weighers' licenses . . . . . .
10—Rights of way . . . . . .

Description of space assigned

Monthly rental

Beginning date of rental charges

Special conditions:

Total amount of monthly rental $

To **Address**

Kind of privilege **Location**

CLASSIFICATION

1—Foreign . . . . . .
2—Intercoastal . . . . . .
3—Inland waterways . . . .
4—Coastwise . . . . . .
5—General office space . . .
6—Ferry slips . . . . . .
7—Concessions . . . . . .
8—Land or seawall lots
9—Weighers' licenses
10—Rights of way

Description of space assigned

Monthly rental

Beginning date of rental charges

Special conditions: **Total amount of monthly rental $**

The above space is situate on property belonging to the State of California, and this assignment of space is made pursuant to Part 1, Division VI of the Harbors and Navigation Code, and other statutes applicable thereto, and for a period of time no longer than may be terminable upon thirty days previous notice to the party using said space. The said assignment of space is of a personal nature and no subletting or transferring of any privileges granted thereunder will be permitted without the written consent of the Board of State Harbor Commissioners for San Francisco Harbor.

The foregoing assignment of space is a revocable license to use the same. The said license is revocable at the pleasure of the Board of State Harbor Commissioners for San Francisco Harbor. Payment of the above mentioned rental in advance is a condition precedent to the continuance of this license and the same may be revoked forthwith at any time when the payment of said rental is in default. When the payment of said rental is not in default, said license may be revoked at any time, said revocation, however, to be effective thirty days after notice in writing thereof.

Any and all fixtures and improvements constructed or installed in or about the above assigned space, shall belong to and remain the property of the State of California, and no alterations or removal thereof shall be permitted without the written consent of the Board of State Harbor Commissioners for San Francisco Harbor.

BOARD OF STATE HARBOR COMMISSIONERS
FOR SAN FRANCISCO HARBOR

_____
Secretary

The above assignment of space and revocable license is hereby accepted upon the terms and conditions hereinabove set forth, all of which are known to, and understood and accepted by the undersigned.

[DATED] _____ _____

SB007 10-40 1M
STATE PRINTING OFFICE

1905

[fol. 1906]

Board of State Harbor Commissioners for San Francisco Harbor
Pier and Wharf Area Assigned for Shipping

Statement of Pier and Wharf Assignments in Effect as of January 24, 1940

Pier No.	Tenant	Total area square feet	Total amount monthly rental
1	Bay and River Navigation Co.	105,352	$1,308.98
3	California Transportation Co.	78,868	1,125.86
5	Bay Cities Transportation Co.	15,926	197.20
5	Leslie Salt Co.	6,475	79.95
5	Napa Navigation & Transportation Co.	6,250	86.04
7	Berkeley Transportation Co.	12,024	152.59
7	Marine Service Corporation	12,737	164.02
7	Petaluma and Santa Rosa RR Co.	24,645	295.25
7	Way's Redwood Empire Freight Lines	3,060	43.14
9	Coastwise Line	61,646	759.28
15	Sudden and Christenson	134,553	859.29
17	Alameda Transportation Co.	3,567	45.36
17	Crowley Launch & Tugboat Co.	13,714	170.51
17	Del Monte Fishing Co.	4,791	77.11
19	Pacific Oriental Terminal Co.	130,657	806.14
23	Pacific Oriental Terminal Co.	126,375	778.11
23	Associated Terminal Co.	11,586	75.00
25	Nippon Yusen Kaisha	105,621	688.73
25	Shipowners and Merchants Tug Co.	1,889	430.00
29	Luckenbach Steamship Co.	215,113	1,482.92
31	Luckenbach Steamship Co.	129,492	994.28
33	Furness Pacific and Holland America Line	67,398	404.39
33	Union Steamship Co. of New Zealand	67,542	434.77
35	Grace Line, Inc. (a/c Panama Pacific)	261,149	1,907.11
35	Grace Line, Inc. (a/c Coastwise Line)	1,996	59.88
35	Grace Line, Inc.	1,833	65.99
[fol. 1907]			
37	Grace Line, Inc.	208,177	1,307.77
39	Williams Dimond & Co.	146,244	1,021.74
41	General Steamship Corp., Ltd.	215,027	1,382.23
45	Geo. Romer and Day McCrone	792	33.26
14	Crowley Launch and Tugboat Co.	2,466	151.18
14	Harbor Tug & Barge Co.	1,433	107.86
16	Consolidated Olympic Line	52,079	641.29
18	Hammond Shipping Co.	102,088	1,246.36
20	Harry Johnson Launch Co.	368	30.00
24	American-Hawaiian Steamship Co.	124,771	820.94
26	American-Hawaiian Steamship Co.	182,117	1,362.39
28	American-Hawaiian Steamship Co.	102,928	744.51
30	Matson Navigation Co.	226,934	1,942.76
32	Matson Navigation Co.	190,721	1,516.03
34	Norton Lilly & Co.	94,236	644.04
36	Kingsley Co. of California	42,620	289.02
38	McCormick Steamship Co.	165,219	1,304.15
40	McCormick Steamship Co.	153,668	1,996.76
42	American President Lines, Ltd.	139,232	994.85
44	American President Lines, Ltd.	240,834	1,463.92
46	American President Lines, Ltd.	86,396	566.58
48	Balfour, Guthrie & Co., Ltd.	65,116	398.23
48	Calmar Steamship Corp.	119,557	739.13
48	Swayne & Hoyt, Ltd.	66,899	451.70
54	Wilbur-Ellis Co.	86,000	375.00
56	State Terminal Co., Ltd.	2,467	80.09
58	Rolando Lumber Co.	17,880	100.00
62	Thiemann & Johnston Launch & Tgbt Co.	180	15.00
64	Loop Lumber Co.	18,600	60.00
64	Richfield Oil Corp.	12,262	147.15

[fol. 1908]

Board of State Harbor Commissioners for San Francisco Harbor
Pier and Wharf Area Assigned for Shipping

Statement of Pier and Wharf Assignments in Effect as of January 24, 1940

Pier No.	Tenant	Total area square feet	Total amount monthly rental
64	Standard Oil Co.	11,338	147 06
64	Tidewater Associated Oil Co.	11,338	147 06
66	Loop Lumber Co.	125,000	380 00
66	Union Oil Co.	11,536	221 45
70	Columbia Steel Co.	80,563	402 81
86	Shell Oil Co.	1,215	20 00
90	Islais Creek Grain Terminal Corpn	7,041	250 00
		4,719,601	$36,994 22

(Here follow 3 photolihtographs, side folios 1909, 1910, 1911)

EXHIBIT No. 3

RECEIPT

STATE TERMINAL CO., LTD.

Incorporated under the laws of California

Main Office, 901 Third Street, San Francisco, Calif.

Phone SUtter 8210

BEFORE THE U. S. MARITIME COMMISSION
DOCKET NO. 555
EXHIBIT NO. 3
WITNESS
FISHER & ASSOCIATES INC.
OFFICIAL REPORTERS
BY

Ex 3

193

This is to Certify, that this Company has received in Storage Warehouse

for the account of

Ex

in apparent good order, except as noted hereon (contents, condition and quality unknown) the following described property, subject to all the terms and conditions contained herein and on the reverse hereof, such property to be delivered to order, upon the payment of all storage, handling and other charges and the surrender of this Receipt properly endorsed.

NUMBER	PACKAGES	SAID TO BE OR CONTAIN	MARKS
		CANCELLED	

CANCELLED

NON-NEGOTIABLE
DUPLICATE—For Reference Only

Lot

*Storage per per

on 193

*Handling per in and out inclusive.

Advances have been made and liability incurred on such goods in the amount of

$

STATE TERMINAL CO., LTD.

claims a lien for all lawful charges for storage and preservation of the goods, also for all lawful claims for money advanced, interest, insurance, transportation, labor, weighing, coopering, and other charges and expenses, in relation to such goods.

*Rates for storage and handling charges are established by the Board of State Harbor Commissioners and this company's published Tariffs filed with the Railroad Commission of California and in our office.

THIS RECEIPT IS VALID ONLY WHEN SIGNED BY ONE OF THIS COMPANY'S DULY AUTHORIZED OFFICERS

EXHIBIT No. 4

NON NEGOTIABLE RECEIPT

DEPOSITOR'S No. No.

Lot Issued 19

GOLDEN GATE TERMINALS

PIER 45, SAN FRANCISCO, CALIFORNIA

HAS RECEIVED in storage at the above location Shed ex.

for the account of and to be delivered

to said depositor, the goods described below, in apparent good order except as noted hereon (contents, condition and quality unknown) to be held subject to all the terms and conditions specified herein and on the reverse hereof, redelivery to be also conditional upon payment of all storage, handling and other proper charges and surrender of this receipt duly endorsed for discharge.

DESCRIPTION OF GOODS OR PACKAGES CONTAINING THEM

QUANTITY	MAKE UP	SAID TO BE OR CONTAIN	MARKS

BEFORE THE U. S. MARITIME COMMISSION
DOCKET NO. 555
EXHIBIT NO. 4
WITNESS —
E. E. FISHER & ASSOCIATES INC.
OFFICIAL REPORTERS
BY Conklin

GOLDEN GATE TERMINALS

PIER 45, SAN FRANCISCO, CALIFORNIA

HAS RECEIVED in storage at the above location Shed , ex.

for the account of and to be delivered

to said depositor, the goods described below, in apparent good order except as noted hereon (contents, condition and quality unknown) to be held subject to all the terms and conditions specified herein and on the reverse hereof, redelivery to be also conditional upon payment of all storage, handling and other proper charges and surrender of this receipt duly endorsed for discharge.

DESCRIPTION OF GOODS OR PACKAGES CONTAINING THEM

QUANTITY	MAKE UP	SAID TO BE OR CONTAIN	MARKS
		BEFORE THE U.S. MARITIME COMMISSION DOCKET NO. 555 EXHIBIT NO. 4 WITNESS — E. E. FISCHER & ASSOCIATES INC. OFFICIAL REPORTERS BY Conklin	

Storage rate* per per

from , 19

Handling charges* per
and out both inclusive.

This receipt is valid only when signed by one of the Terminals' authorized agents. Manifold copies hereof are for memorandum use only.

Advances made $

Liabilities incurred for

for which, whether or not the precise amount is known at this date, Golden Gate Terminals claims a lien, as well as for all other proper charges and expenses hereafter incurred relative to said goods.

GOLDEN GATE TERMINALS

By

(41)

* Rates for storage and for handling charges respectively are fixed and established by the Board of State Harbor Commissioners and on file at the Ferry Building and by the Terminals' published tariffs filed with the Railroad Commission of California and open for inspection in the office of the Terminals.

1910

(REVERSE OF ORIGINAL RECEIPT)

Golden Gate Terminals are hereby discharged under this receipt for the following goods redelivered, any unreleased balance remaining, however, subject to lien for unpaid charges and advances on the entire lot originally stored.

DATE	ORDER NO.	QUANTITY RELEASED	BALANCE	SIGNATURE
		ENTIRE LOT RECEIVED.	NONE	

GENERAL TERMS AND CONDITIONS

Rates are subject to limited liability as well as to other rules and regulations provided and contained in the tariffs on file.

Rates do not include fire or other insurance and the Terminals do not arrange for insurance except when and as so instructed in writing.

The Terminals are not responsible for loss or damage caused by fire (from any cause), climatic or weather conditions, riots, strikes, insurrection, nor from inherent or perishable qualities of the goods stored, nor from other causes beyond the Terminals' control, nor for loss or damage caused by leakage, pilferage, theft, vermin or water, unless such loss or damage be caused by the failure of the Terminals to exercise the ordinary care and diligence provided by law.

Goods in bonded warehouse are subject to all federal government regulations, and cannot be delivered without authority of the U. S. Collector of Customs.

No delivery of goods covered hereby will be made except on presentation of this receipt duly endorsed, and in cases of partial delivery accompanied by written order.

[fol. 1912] EXHIBIT No. 5

AGREEMENT

This agreement made this 1st day of March, 1932, by and between the Board of Port Commissioners, acting for the City of Oakland, a municipal corporation, herein termed the "Board" and McCormick Steamship Company, a corporation, herein termed the "Steamship Company".

Witnesseth: In consideration of the premises herein, it is mutually promised, covenanted and agreed as follows:

(1) The Board of Port Commissioners hereby sets aside to the said steamship company, for a period of time no longer than may be terminable upon thirty (30) days previous notice to said company, the privilege to use and occupy for the purposes hereinafter mentioned, the southwesterly one-half of the floor area of the Ninth Avenue Pier Shed of the City of Oakland, together with the adjacent front and rear platforms (but not including berthing space), the exact location of such shed space in said pier shed and on said platforms which the steamship company shall be permitted to use pursuant to this agreement to be designated by painted lines on said floor by the Port Manager of said board.

(2) The steamship company shall use said pier shed space and adjacent rear and front platforms exclusively for the purposes of carrying on its steamship operations in receiving, handling and dispatching cargo transported by such vessels as it shall own and control, or by vessels for which at the date of this agreement it is the regularly constituted shipping agent, it being provided, however, that in the event that the steamship company shall desire to use any part of said space for the handling of the cargo of any other vessel or steamship line which it shall become the agent therefor, it shall so advise the board in writing of such intention and exhibit to the board such evidence as shall be necessary to establish such agency; provided, however, the [fol. 1913] steamship company shall not engage in competition with the Port of Oakland to take over any of the business it may control or handle.

(3) In the handling of any tonnage on said pier space, the steamship company shall hire and maintain its own crew of dock clerks, checkers and other necessary help and such tackle, gear and appliances as it may require, it being agreed

that the schedule of rates and charges regularly prescribed by the tariff adopted by the said board shall be so modified that no rates or charges shall be assessed by the Board against the steamship company for checking such tonnage, issuing receipts of manifests, car loading or unloading, stenciling or other services which the said steamship company may perform in connection with the handling of any tonnage transported by it through, in or over said pier space.

(4) In carrying on its operations upon said pier, the said steamship company shall assess and collect charges for all services performed by it at the same rates and charges as are prescribed from time to time by the regularly adopted tariff published by the said board. Said company shall, in good faith, collect said charges from all shippers and others with whom it shall carry on its business. Nevertheless, nothing in this agreement shall be understood or construed to constitute said steamship company as terminal operators.

(5) The privilege herein granted to the steamship company by said board is a revocable license to use said pier space and is not a lease or assignment and shall continue from month to month (until terminated as hereinafter provided); it being expressly understood that the said license is herein granted by the said board as an expediency to bring the said Ninth Avenue Pier into more intensive use a harbor facility of the Port of Oakland, and that whenever the Board of Port Commissioners shall, in its discretion, determine that it shall be to the advantage of the Port of Oakland or in the interest of the public, or be required for other use, that such permission or license shall be terminated, the company will, upon the receipt of notice as herein provided, promptly vacate said pier and remove its equipment, cargo, and employees therefrom.
[fol. 1914] This agreement, and the privilege therein granted, may be terminated at any time by either party first giving to the other party thirty days' notice in writing of the intention to so terminate the same.

(6) The steamship company shall pay to the city at the close of each month, during which this agreement shall continue in effect, for such privilege a monthly charge based upon the proportion of the coastwise and offshore tonnage brought into said Ninth Avenue Pier Shed or placed on, or

moved over the open platforms thereof during such preceding month by such company or its agents or under its direction, whether such tonnage shall be brought into said pier by water, rail, truck or otherwise, together with the other charges herein provided.

(7) Such monthly charge for the use of the said pier space (the whole area covered by this license being fifty-six thousand, six hundred thirty-four (56,634) square feet) shall be at the rate of one and two tenths (1.2) cents per square foot per month for coastwise cargo and six-tenths (.6) cents per square foot per month for offshore cargo, which shall be paid in proportion to the amount of the said two classes of tonnage handled through the portion of the pier sheds in use by the second party, or by the second party directly between car, truck or barge and vessel, (exclusive of lumber and lumber products), accordingly as the terms "coastwise and offshore" are defined by the tariff of the Port of Oakland as adopted by the Board of Port Commissioners.

In this connection it is agreed that the minimum charge per month for such pier shed space and adjacent front and rear platforms at the rate of six-tenths (.6) cents per square foot for said fifty-six thousand, six hundred thirty-four (56,634) square feet is Three Hundred Thirty-Nine and 80/100 Dollars ($339.80).

It is understood that in all cases lumber and lumber products as defined by the said tariff adopted by the said Board shall be governed by the charges, provisions and regulations of the said tariff and the charges therefor paid to the first party when due.

(8) In the event the steamship company shall require, from time to time, any additional space upon said pier, in- [fol. 1915] cluding the open dock, for its operations, exclusive of the handling of lumber, it shall make application therefor to the Port Manager or the officer of the port in charge of said Ninth Avenue Pier, who shall designate such space, if any, as may be available for such assignment. Such additional space shall be paid for by the company on a daily basis, the rate therefor per square foot per day to be computed upon the rate of six-tenths (.6) cents per square foot per month for offshore cargo and one and two-tenths (1.2) cents per square foot per month for coastwise cargo calculated on a thirty-day month basis, together with the other charges herein provided for; provided no ad-

ditional space shall be allotted to the company unless the space previously allotted to it at the time of application is in use by it to reasonable full capacity, and provided further the Board may, in its discretion, at any time refuse to allow the company the use of additional space.

(9) The allotment of space herein granted shall not be exclusive, and whenever said space, or any part thereof, is not required for the use of the steamship company for the purposes herein specified, the Board shall have the right to and may permit others to use the same in such manner as not to interfere with the business of the steamship company, under such rules and regulations as may be prescribed by the Board or otherwise by law.

(10) In addition to the payment by the steamship company of the foregoing monthly and daily charges on a square foot basis, the steamship company shall pay to the Board, when due, any and all dockage and tolls incurred by any ships docking at said pier under its direction or by any cargoes or goods brought on to said pier by the company, as well as any other charges it may incur or cause to be incurred at the rates and in the manner as may be prescribed by the schedule of rates and charges set forth in the tariff of the Port of Oakland, as adopted or amended from time to time by the said Board of Port Commissioners.

(11) In addition thereto also, such office space available in said pier as shall be occupied by such steamship company shall be paid for by it at the rate of eight cents (8c) per square foot per month. Office rental shall include light and [fol. 1916] heat to be supplied by the city. Checker's office space shall be paid for at the rate of three cents (3c) per square foot per month.

(12) Furthermore, the steamship company shall, at the close of each month, reimburse the Board for the cost of furnishing light and power to the pier, exclusive of office space, for its uses as per meter reading or as otherwise agreed.

(13) The City shall provide night watchman services for the said pier shed and platforms. Such watchmen shall be employees of the Board, who shall be appointed as provided by the city charter, and shall perform their duties under the direction of the Board. The said steamship company

shall each month also reimburse the Board for one-half of the cost of such service to the city, provided that in the event the Board shall hereafter determine that the company shall pay a greater proportion of such costs a supplemental agreement shall be entered into.

(14) All water used by the steamship company for use of vessels shall be paid for by it at the meter rates established by the tariff of the said city of Oakland.

(15) The steamship company shall provide and maintain, at its own expense, all telephone and other utility service, not herein otherwise provided for, as may be required by it in its steamship operations.

(16) The Board shall, at all times, maintain, at its own expense, an officer who shall be in charge of said Ninth Avenue Pier and all terminal and storage operations carried on therein, and shall have general supervision over the operations of the steamship company upon said pier. Said Board may likewise, at its own expense, employ such additional force as may be required for its terminal and storage operations, it being expressly understood that nothing in this agreement shall interfere with the right of the Board to maintain and operate all such portions of said Ninth Avenue Pier, as shall not be subject to the use of the steamship company hereunder, as a public terminal or to permit others to use it for the receipt, storage, handling and dispatch of cargo.

[fol. 1917] To this end, the Board, or any person or firm with whom it may do business, shall at all times have a free and reasonable right of passage for the movement of cargo or other goods or equipment through and over any space occupied by the steamship company, and said steamship company shall not pile any cargo, or other property, in the passageways, or otherwise interfere with any terminal operations of said Board on the said pier or with any operations carried on under its direction or permission.

(17) All cargo brought onto the said pier or placed in the shed by the steamship company (whether on the space allotted to said company or elsewhere) shall be subject to storage or demurrage charges, after the free time period, as provided for in the tariff of rates and charges as

adopted by the Board of Port Commissioners, which storage charges understood to be in the nature of additional rent for the space so assigned or allotted. Whenever any such cargo is to be held in storage, the steamship company shall advise the officers of the Port of Oakland in charge of such pier of the number of packages, weight and nature of such cargo, and shall furnish such further information as may be required and prepare the receipt therefor if required by the Board. Such officer shall thereupon sign the receipts for such cargo to the steamship company. When such cargo is to be delivered to the owner thereof, the steamship companies shall make such deliveries and shall assume all the responsibility and expense which may be connected with the checking out of such cargo and the delivery of the same, (it having personallly checked the said cargo unto said pier and supervised the piling or handling of the same upon its arrival), and shall hold the Board and City of Oakland free and harmless from all claims on account of errors in checking the cargo in or out, or for damge in handling or piling the cargo. Upon such cargo being released from such storage or demurrage, [fol. 1918] the steamship company shall furnish to the Board the necessary information whereby the board may prepare its statements for billing the owner or consignee for the storage and other charges to be paid to the board, it being agreed (that as the board shall receive no service charges in connection with such cargo) the steamship company shall guarantee the board from losses due to any failure of the owner or consignee to pay to the board the amount of any charges which may have so accrued.

The responsibility of the board in respect to any such cargo remaining in storage shall be limited to its safe keeping in the usual manner pertaining to storage accounts so far as loss or damge may result from the negligence of its employees.

(18) Upon the steamship company giving the representative of the board, who may be in charge of the Ninth Avenue Pier, reasonable advance notice of the contemplated arrival of any vessel controlled or operated by the company, adequate berthing space shall be provided by the board for such vessel upon its arrival alongside of the wharf of said pier. Such berthing spaee shall be provided, as near as may be practicable in the judgment of such rep-

resentative, opposite the space in the pier in use by said steamship company. The board, however, shall not be obligated to supply the company with berthing space for more than one vessel at a time, unless the remaining berthing space of such pier be not in use.

(19) The steamship company shall maintain such portion of the pier as may be used by it in a clean and orderly condition, in a manner satisfactory to the Port Manager employed by the said city. No goods, merchandise or material shall be brought by the steamship company upon the said pier, or be by it permitted to be stored thereon, which is in any way hazardous or offensive, or which may contaminate or effect other cargo.

(20) The board, through its authorized representatives, shall have a right to enter upon the portion of the pier used by the steamship company at all times for purposes of inspection, or for any purpose incidental to the rights of the board.

[fol. 1919] (21) No additions, alterations, or repairs shall be made to said pier without the written consent of the board.

(22) No signs, other than placards, shall be inscribed, painted or placed upon said pier by the steamship company, or under its direction, excepting with the written consent of the board first had and obtained. No placards shall be placed therein, excepting those as shall pertain to or advertise the steamship company's business or its agencies.

(23) The steamship company shall not use or permit the said premises to be used in whole or in part for any purpose or use in violation of any present or future laws, ordinances and general rules and regulations relating to sanitation, or the public health, safety or welfare of any public or governmental authority at any time applicable thereto, including the City of Oakland and or the Board of Port Commissioners.

(24) The privilege herein granted is of a personal nature and the steamship company shall not at any time, in any manner, either directly or indirectly, assign, hypothecate, encumber or transfer it or any interest therein, or sublet the whole or any part of said pier space, or license the use of the same. In the event of any such assignment or

transfer, or any attempt to sublease or license the use thereof, whether directly, by operation of law, or otherwise, the privilege or license herein granted shall ipso facto cease and be null and void.

(25) If any sums of moneys payable to the board by the steamship company be not promptly paid when due, or in the event default be made in all or any of the terms, agreements or covenants herein contained on the steamship company's part to be performed, then, in any such event, at the option of the board, the board may by resolution or ordinance, and upon giving the company ten (10) days' notice, declare this privilege forthwith forfeited, and upon the conclusion of such ten (10) day period, if such default shall have not been cured, remove the company and its cargo and equipment from said premises, or, at its option, place or hold such cargo and equipment in storage at the expense of the said steamship company.

(26) This agreement is made subject to, and the steam- [fol. 1920] ship company shall at all times comply with, all the harbor and port requirements, rules and regulations adopted by the Board of Port Commissioners, the United States Government and other public authority, from time to time, including the rates, charges and regulations prescribed by the tariff of the Port of Oakland regularly adopted by the said Board.

(27) The Board, in its discretion, shall authorize and enter into such supplemental agreements, from time to time, relative to this agreement or the business operations of the steamship company and the use of the pier as it may deem necessary or convenient.

(28) The steamship company shall pay all licenses and other taxes required by law to be paid by it.

(29) The steamship company shall exercise all reasonable care and diligence in and about the occupation, possession and use of the said pier so as to avoid the causing of damge, loss or injury to any person or property whatsoever, and will repair all damage resulting from the use thereof, excepting such as may be due to ordinary wear and tear. The company will protect and indemnify the City of Oakland and the said Board of Port Commissioners and save them, and each of them, free and harmless from

any and all liability, charges, expenses or costs (including repairs except as may be due to ordinary wear and tear) to any and all persons, including itself, for damage, loss or injury occasioned to or sustained by such persons or their property in or by reason of the occupation, possession or use of said pier by the said company, its agents or employees, or by any business or other operations howsoever carried on by it.

Except as otherwise in this agreement expressly provided, the Board shall assume no responsibility for the safe-keeping of any cargo or other equipment or property brought on the said pier by the steamship company or by others for the account of said company.

(30) The steamship company shall furnish to the Board at the close of each month, and oftener if required by the Board, all necessary reports covering its steamship operations upon said pier, as may be required for the purposes of permitting the Board to bill the said company [fol. 1921] for the charges due it. Furthermore, the books of the company covering its operations upon said pier, shall at all times be open to inspection by the Board or its authorized agent. All bills rendered against the steamship company by the Board shall be paid on or before the 10th day of the month following the date of the invoice.

(31) In further consideration of the granting to the steamship company of the privilege of the use of said pier space as herein provided, the steamship company expressly undertakes and agrees that all discriminating rates and differentials against the Port of Oakland, or any of its publicly operated facilities, shall be removed from all tariffs under the control of the company, as well as from the tariffs of any steamship line or vessels for which it shall use the said pier as steamship agent, which tariffs it may be enabled to control, and the said steamship company will conscientiously use its best efforts with any conference to which it may belong to place the Port of Oakland on a strict parity with the port of San Francisco, and will endeavor to the extent of its ability to increase the amount of tonnage handled by it through the Port of Oakland according to the true spirit and purposes of this agreement.

(32) It is agreed that in the event of any controversy between the parties hereto, or any of their representatives

or employees relative to the interpretation of any provision of this agreement, or as to any rights or duties of the steamship company thereunder, the Board of Port Commissioners shall be the sole arbitrator, and the steamship company shall accept any decision the Board shall make in the premises and abide thereby so long as it chooses to continue the use of such pier space pursuant to the privilege herein granted.

(33) The steamship company shall pay to the Board upon the execution of this agreement the cost of the publication [fol. 1922] of the notice inviting proposals therefor and of the ordinance authorizing its execution.

In Witness Whereof, the parties hereto, thereunto duly authorized, have executed this agreement in triplicate, as of the day and year first above written.

Board of Port Commissioners, acting for the City of Oakland, a municipal corporation, By ——, President of said Board. (Seal.)

Attest: A. C. Abel, Secretary.

McCormick Steamship Company, By Charles Wheeler, V. P. G. M.

Approved as to form and legality this 17th day of Aug., 1932. Markell C. Baer, State Attorney.

[fol. 1923] EXHIBIT No. 8

This Agreement, made and entered into this 5th day of November, 1914, by and between City of Oakland, a Municipal corporation organized and existing under and by virtue of the laws of the State of California, and Howard Company, a corporation organized and existing under and by virtue of the laws of the State of California.

Witnesseth:

(1) It is hereby agreed that the boundary line between the property to which the City of Oakland is entitled under and by virtue of an act of the Legislature of the State of California entitled "An Act to incorporate the Town of Oakland and to provide for the construction of wharves thereat" in effect May 4th, 1852, and the property of the

Howard Company between the Easterly line of Myrtle Street extended Southerly in its present course and a line parallel with and 108.27 feet Westerly at right angles from the Easterly line of Filbert Street is the low tide line of May 4th, 1852, and that said low tide line of May 4th, 1852 is fixed and determined as located as follows:

Commencing at a point on the easterly line of Myrtle Street produced southerly in its present course which said point is 1109.12 feet along said line of Myrtle Street southerly from the southerly line of First Street, thence southwesterly in a straight line to a point on the line parallel with and 108.27 feet westerly at right angles from the east line of Filbert Street, which said point is 1275.18 feet southerly along said 108.27 foot line from the southerly line of First Street.

(2) Said Howard Company hereby agrees to expend on or before the 27th day of October, 1915, at least the sum of Five Thousand Dollars ($5,000.00) in the building or maintaining of wharves and slips on the land of the City of Oakland southerly of said low tide line and between said Easterly line of Myrtle Street extended southerly in its present course and said 108.27 foot line and between said low tide line and the northerly pier head line in Oakland Harbor so that shipping may be advantageously accommodated thereat, and said Howard Company hereby further agrees, dur[fol. 1924] ing the life of its contract to keep the wharves and slips now upon and hereafter to be constructed on said property in repair and open to public use during the life of this contract.

(3) It is hereby agreed between the parties hereto that said Howard Company, its successors and assigns, shall have the right to use for thirty-five years from and after the 27th day of October, 1914, the wharves and slips now existing and hereafter constructed and maintained upon the lands of the City of Oakland lying southerly of said low tide line of May 4th, 1852, and between said Easterly line of Myrtle Street extended southerly in its present course, and said 108.27 foot line and northerly of said pier-head line, upon the following terms and conditions, to-wit:

(a) Said right shall not be exclusive, but said wharves and slips shall be open to use by others to whom such right may be given by the City of Oakland.

(b) For the use of said wharves and slips said Howard Company shall pay to the City of Oakland tolls, wharfage and dockage at the rates charged by the City of Oakland at its other municipally owned wharves in the City of Oakland.

(c) Said Howard Company shall have the right to permit others to use said wharves and slips, but such use shall, as to the City of Oakland be deemed the use by the Howard Company, and the Howard Company shall be responsible to the City of Oakland for the tolls, wharfage and dockage accruing for such use as if such use were in fact the use of the Howard Company. Persons and parties using said wharves and slips other than the Howard Company or those permitted by it to use the same, shall pay, as a compensation for such use, tolls, wharfage and dockage at the same rates as are paid by said Howard Company.

[fol. 1925] In the berthing of vessels at said wharves, vessels designated by the Howard Company, or by those permitted by the Howard Company to use said wharves, shall have a prior right over all other vessels, and in handling goods over said wharves and in placing goods on said wharves said Howard Company, or those permitted by said Howard Company to use said wharves shall have a prior right over all other persons.

(e) The Howard Company shall have the right to maintain and use the coal hoisting trestle and its appurtenances now on the wharves already built as a part and appurtenance of its coal bunkers on its property in the rear of said wharf, and to remove, repair, or alter the same at any time.

(f) The Howard Company, its successors and assigns, shall, during said term of thirty-five years, maintain said wharf already built in good condition and repair, wear and tear and damage by fire and the elements excepted, and shall likewise, from the time of the construction of said wharf to be built, if the same be built, during the remainder of said term, maintain said wharf in good condition and repair, wear and tear and damage by fire and the elements excepted.

(g) The Howard Company shall keep said wharves insured against loss by fire in an amount equal to at least seventy-five per cent (75%) of the cost of constructing the

same under a policy or policies providing that loss, if any, shall be payable to the City of Oakland. In case of such loss occurring, the Howard Company shall have the right to repair or reconstruct the wharf damaged or destroyed, and upon such repair or reconstruction the insurance paid to the City of Oakland by reason of such loss shall be by it paid to the Howard Company. In case the Howard Com- [fol. 1926] pany does not, within sixty (60) days after such loss, commence the work of repairing or reconstructing the wharf damaged or injured and complete the same with all reasonable diligence, the City of Oakland shall have the right to declare the right of use hereby granted at an end as to the wharf so damaged or destroyed, in which case the Howard Company shall have no claim whatsoever to said insurance.

(h) The Howard Company shall likewise during said term of thirty-five years maintain a slip at least fifty (50) feet wide on the east side of said wharf already built, and a slip at least fifty (50) feet wide on the west side of said wharf, dredged to a depth of at least twenty (20) feet at mean low water. In case of the construction of an additional wharf or wharves, said Howard Company, its successors or assigns, shall, at and from the time of the construction of said wharf, during the remainder of said term, dredge and maintain all necessary slips for the accommodation of shipping at said new wharf or wharves.

(i) The City of Oakland shall not construct or authorize the construction of any structure on the portion of the estuary of San Antonio hereinbefore described which in any way interferes with said wharves or slips or the access of vessels thereto or the unimpeded construction and use of the same.

(j) The Howard Company shall likewise, during the said term, maintain a suitable roadway across its lands from First Street to said wharves, and shall permit the same to be used without charge in connection with the use of said wharves by those entitled to use such wharves, but the permitting of such use of said roadway shall not create any easement or interest of any nature whatsoever either in said roadway or in the lands of the Howard Company. The Howard Company shall likewise [fol. 1927] maintain on each of said wharves a railroad track

for the transfer of freight between railroad cars and vessels and a track or tracks connecting said tracks with the tracks on First Street of the Southern Pacific Company and shall, during said term, switch cars to and from said tracks of the Souther- Pacific Company from and to said wharves for any person permitted by the City of Oakland and desiring to use said wharves for the transfer of freight between railroad cars and vessels, and shall spot on said wharves for loading and unloading the cars so used by any such person. For such service of switching and spotting cars the Howard Company shall have the right to make a charge of Two Dollars and a half ($2.50) per car, it being deemed that when a car is both unloaded and reloaded there is a double movement. Upon the termination of said term of thirty-five years the Howard Company shall have the right to remove said tracks.

(k) The City of Oakland shall pay the Howard Company, but only out of the receipts of said wharves and to the extent of ninety-five per cent (95%) of such receipts, as hereinafter provided, the present valuation of said wharf already constructed, to-wit: $6640.35, with interest at the rate of five per cent (5%) per annum from the date of this contract. In case an additional wharf or wharves are constructed; the City of Oakland shall also pay to said Howard Company the actual cost of constructing said wharf or wharves and of making the slips on each side thereof together with interest at the rate of five per cent (5%) per annum. Upon the completion of said wharf or wharves, or slips, the Howard Company shall render to the City of Oakland a verified itemized statement in writing of the cost thereof, which statement shall be subject to check by the City of Oakland, and, as to all items not objected to in writ-[fol. 1928] ing by the City within sixty (60) days, shall be final. In case the City of Oakland and the Howard Company cannot agree as to any item to which objection is so made, the propriety of such item shall be submitted to some firm of certified accountants, mutually agreed upon, for determination. Interest on the correct amount of such cost as finally determined shall run from the date of the rendition of such statement.

The Howard Company shall have the right to make additions or betterments to said wharves, and in case such addition or betterment is made the cost of the same shall

be deemed a part of the cost or value of the wharf to which the same is made and shall be repayable as such by the City together with interest at the rate of five per cent per annum. Upon the completion of such addition, the Howard Company shall render to the City of Oakland a verified itemized statement in writing of the cost thereof, the same to be subject to check and objection as in the case of the original cost of said wharf to be constructed, and any items not objected to to become final, and the propriety of any items so objected to to be determined in similar fashion, and the interest on the correct amount of such cost to run from the time of the rendition of such statement. Said City of Oakland shall likewise pay to said Howard Company the actual cost of maintaining and repairing said wharves and insuring the same, as hereinbefore provided, and maintaining said slips together with interest at the rate of five per cent (5%) per annum. The cost of maintaining and repairing said wharves, for which the Howard Company is to be so paid, shall not, under this provision, or any provision of this ordinance, include the cost of repairs or reconstruction necessitated by damage or destruction by fire to the extent to which such damage of destruction is, or under the provisions of Ordinance No. 738 N. S. should be, covered by insurance.

[fol. 1929] (l) On or before the 15th day of each month during said term of thirty-five years, the Howard Company shall render to the City of Oakland a verified itemized statement in writing of the cost of such repairs, maintenance and insurance during the preceding month, the same to be subject to check and objection as in the case of the original cost of said wharf to be constructed, and any items not objected to to become final, and the propriety of any item so objected to to be determined in similar fashion, and interest on the correct amount of such cost to run from the time of the rendition of such statement.

(m) The Howard Company shall keep full and accurate books of account of said costs and the same shall be at all times open to inspection and examination by the City of Oakland.

(n) On or before the 25th day of each month during said term of thirty-five years, the City of Oakland shall render the Howard Company an itemized statement in writing of

the receipts by the City of Oakland during the preceding month for tolls, wharfage and dockage for the use of said wharves and slips, and shall at the same time pay to the Howard Company ninety-five per cent (95%) thereof, the same to be applied in payment of the amount hereinbefore specified to be paid by the City to the Howard Company until such amounts are paid in full. In case said ninety-five per cent of such receipts by the City shall not, at the expiration of said thirty-five years, have fully paid for the amounts so to be paid by the City of Oakland to the Howard Company, nevertheless all obligations of the City of Oakland to pay the balance of said last mentioned amounts shall cease and determine. In case said amounts so to be paid by the City of Oakland to the Howard Company are fully paid in the manner aforesaid before the expiration of said thirty-five years, the City of Oakland shall, from the time at which said amounts are fully paid until the expiration of said thirty-five years, pay the Howard Company, [fol. 1930] out of the receipts by the City from said wharves and slips, the cost of maintaining and repairing said wharves and insuring the same and maintaining said slips, to the extent of 95% of the receipts, and in the event that for any month said receipts are more than sufficient to pay from 95% thereof all costs due said Howard Company up to said time, then of the surplus of said receipts, remaining after deducting five per cent of the gross receipts to be retained by the City of Oakland, and after repaying said costs to said Howard Company, 80% of said surplus shall be paid to the Howard Company, and 20% of said surplus shall be retained by the City of Oakland. In case 95% of said gross receipts in any one month shall be insufficient to repay to said Howard Company the costs herein provided for, together with interest, then the unpaid balance of said costs in favor of said Howard Company, together with interest shall be carried over into succeeding months until the whole thereof is repaid from said 95% of said gross receipts of said succeeding months.

(o) The City of Oakland does not and shall not assume any obligation to pay the said Howard Company any sum of money whatever except out of the gross receipts from the use of said lands so improved by said Howard Company and to the extent of ninety-five per cent of said gross receipts.

(p) In addition to the right to collect tolls, wharfage and dockage for the use of said wharves and slips on the premises hereinbefore described, said City of Oakland shall be entitled to collect dockage from ships and tolls on merchandise, at the rates hereinbefore provided for, for all ships berthing at, and for all goods moved over, any extension or portion of any wharves northerly of said low [fol. 1931] tide line of May 4th, 1852, and between said east line of Myrtle Street extended and said line 108.27 feet westerly from the easterly line of Filbert Street, but said City of Oakland shall not be entitled to make or collect any wharfage on merchandise for the use of any such portion or extension of any of said wharves, and said City of Oakland shall pay to said Howard Company, out of the receipts herein provided for, and in the manner herein provided, the cost of maintaining and repairing any wharves northerly of said low tide line.

(q) In case the City of Oakland fails to collect from parties permitted by it to use said wharves and slips other than the Howard Company and those permitted by it to use the same, the legal rates for such use, as hereinbefore provided, the City of Oakland shall nevertheless account to the Howard Company for the amount of such rates which the City so fails to collect as if the same had been collected.

(r) In case the Howard Company, its successors or assigns, fails to do or perform any of the terms and conditions of the grant of the right to use said wharves and slips which it is obligated hereunder to perform, and remain in such default for the period of sixty (60) days after notification to it by the Council of the City of Oakland, declaring it to be the intention to forfeit the right hereby granted, by reason of such default, the City of Oakland shall have the right to forfeit said right.

(s) The Howard Company shall have the right to construct, maintain and use on said wharves such superstructures as are necessary for the conducting of its business and shall have the right to alter, repair or remove such structures at any time.

[fols. 1932-1933] (t) The Howard Company shall pay all the expense of printing Ordinance No. 738 N. S.

This contract is executed in triplicate.

In Witness Whereof, the City of Oakland, a municipal corporation, by its Mayor heretofore duly authorized by Ordinance No. 738 N. S., in effect October 27th, 1914, has signed its name, and said Howard Company, a corporation, by its President and Secretary, heretofore duly authorized, has signed its name and affixed its official seal the day and year first above written.

City of Oakland, a Municipal Corporation, by Frank K. Mott, Mayor of the City of Oakland. (Seal.)

Countersigned, Geo. E. Gross, Auditor.

(Seal.)

(Auditor's No. 2000)

Howard Company, by S. H. Boardman, President; by H. G. Ramsay, Secretary.

Approved as to form and legality.

Charles A. Beardsley, Assistant City Attorney.

I, George E. Gross, as Auditor of the City of Oakland, hereby certify that there remains unexpended and unapplied a balance of the appropriation or fund applicable to the payment provided for in the foregoing contract sufficient to pay the estimated expense of executing said contract, as certified by the Board or Officer making the same.

Geo. E. Gross, Auditor.

Dated, Nov. 7, 1914.

[fol. 1934] EXHIBIT No. 60

California Railroad Commission
Transportation Department
Engineering Division

Preliminary Report Providing A Statement of The Marine Terminal Problem In The San Francisco Bay Area, With Supporting Data. Case No. 4090.

San Francisco, California, January 14, 1936.

Dr. Ford K. Edwards, Transportation Economist.
T. G. Differding, Assistant Engineer.

[fol. 1935] San Francisco, Calif. January 14, 1936.

Case No. 4090

Mr. Warren K. Brown,
Director of Transportation,
Building.

Herewith is the preliminary report of the Engineering Division of the Transportation Department setting forth the result of a study dealing with rates, rules, regulations, practices, etc., of the marine terminal operations in the San Francisco Bay area in connection with Case No. 4090. It is planned to offer the report as an exhibit in this case, set for hearing before President Harris, January 14, 1936, in San Francisco.

This study and report has been prepared by Dr. Ford K. Edwards, Transportation Economist, and T. G. Differding, Assistant Engineer. It is the object of this report to place before the Commission for its consideration the various factors to be considered in a movement toward the stabilization of the terminal business on a reasonable, nondiscriminatory and compensatory basis.

It is encouraging to note that the officials of the publicly owned and/or operated marine terminals have expressed their desire to cooperate with the Commission in its endeavor to remove as far as possible present unsatisfactory conditions.

The Commission's files show the results of many extended hearings and conferences which have from time to time dealt with the various phases of the problem involved herein. In order that the situation could be viewed in its entirety, it appeared desirable that the whole matter be brought into this investigation and, in so far as I know, this marine terminal investigation is one of the most comprehensive that has been undertaken by any State commission. The need for the investigation has been recognized by practically all of the operators who have urged the Commission to institute the same.

This preliminary report is to be followed by a final report outlining conclusions and recommendations of the Engineering Division dealing with the subject matter involved herein.

Respectfully submitted, J. G. Hunter, Transportation Engineer.

[fol. 1936] San Francisco, California, January 14, 1936.

Case No. 4090

Mr. J. G. Hunter,
Transportation Engineer,
Building.

Pursuant to your instructions, we are presenting herewith a preliminary report in Case No. 4090, setting forth a statement and analysis of the wharfinger problem in the San Francisco Bay area. This preliminary report is to be followed by a second and final report providing a complete analysis and recommendations.

We find that two principal problems face the industry. The first is the inadequacy of existing revenues. The second is the diversion of tonnage from one port to another through the device of absorption.

Considering them in order, the failure to meet operating costs is primarily due to an increase in labor costs and to rate reductions. We believe a solution of this problem embraces the following: first, a scrutiny of the terminal expenditures to the end that unnecessary expenses in the form of absorptions or otherwise be eliminated; and second, a determination of the cost and value of the various services rendered with the object that the respective charge for each shall be reasonable and compensatory. For example, if the toll and other charges against the cargo are not reasonable and compensatory, the immediate task is to ascertain such fact and to prescribe what the proper charge shall be.

The completion of this analysis will determine our conclusions and recommendations in the final report. The purpose of the attached preliminary report is to set forth the facts and economic factors that must be considered in such analysis.

The solution of the revenue problem as outlined above may solve in part the problem of tonnage diversion through absorptions. However, all tariff absorption items have been analyzed at length in this report with the intent that those items may be cancelled which fail to meet such standards of reasonableness as this investigation may develop.

[fol. 1937] Your attention is called to the fact that the major portion of the total dock facilities in the San Francisco Bay area is controlled by State or Municipal bodies and hence is not subject to the Commission's jurisdiction.

Any changes in the present rates, rules and practices of the private terminals can only be made, therefore, with the full cooperation of these bodies. They have assured us, however of their keen interest in this investigation and have offered every assistance.

We wish to state that we have been extended every assistance and cooperation by the Terminal operators and public bodies contacted in this investigation.

Respectfully submitted, Ford K. Edwards, Transportation Economist. T. G. Differding, Assistant Engineer.

[fol. 1938] California Railroad Commission

Transportation Department

Engineering Division

Preliminary Report

Providing a Statement of the Marine Terminal Problem in the San Francisco Bay Area, With Supporting Data

Case No. 4090

Dr. Ford K. Edwards, Transportation Economist;
T. G. Differding, Assistant Engineer.

San Francisco, California, January 14, 1936.

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[fol. 1942] Introduction

1. *Scope of Investigation:*

This report is made pursuant to the Commission's investigation on its own motion, first, into the rates, rules, regulations, tolls, charges, rentals, classifications, contracts, practices and operations of certain concerns doing business as public utility wharfingers and/or car loaders or unloaders and/or warehousemen to determine whether or not any or all such rates, rules, regulations, etc., are unreasonable, discriminatory or preferential in any particular, or in any manner illegal or unlawful, or whether additional tariffs should be filed with the Commission covering operations not now set forth in the tariffs on file.

The concerns so affected are as follows:

1. Encinal Terminals.
2. Howard Terminal.
3. Parr-Richmond Terminal Corporation.
4. State Terminal Company, Ltd.
5. W. C. Marr, M. S. Dodd and Nathan Moran, copartners, doing business as San Francisco Terminals.
6. South San Francisco Terminal Company.
7. El Dorado Terminal Company.
8. Pacific Oriental Terminal Company, Ltd.
9. Rhodes-Jamieson, Ltd.

Secondly, the Commission's investigation inquiries into the rates, rules, regulations, etc., of certain additional concerns for the purpose of determining whether any or all of them are engaging in business as public utility wharfingers within the meaning of Section 2(z) of the Public Utilities Act and/or as car loaders within the meaning of [fol. 1943] Section 2(1) of the Public Utilities Act and should, therefore, be required to file tariffs with the Commission; and further, to determine whether such rates, rules, regulations, etc., of such concerns are unreasonable, discriminatory or preferential, or in any manner illegal or unlawful. The investigation also inquires into the question of whether any or all of these concerns are engaging in busi-

ness as public utility warehousemen within the meaning of Section 2(aa) or Section 2½ of the Public Utilities Act.

The concerns without tariffs on file with the Commission and thus affected by this second part of the investigation are as follows:

1. Interstate Terminal.
2. Albers Bros. Milling Company.
3. J. M. Atthowe, an individual, doing business as Berkeley Transportation Company.
4. General Steamship Corporation, Ltd.
5. The Paraffine Companies, Inc.
6. G. B. Lauritzen, H. P. Lauritzen and M. P. Bush, copartners, doing business as Richmond Navigation and Improvement Company.
7. Sudden & Christenson.
8. Williams Dimond & Company.
9. Islais Creek Grain Terminal Corporation.

From time to time various difficulties facing the terminals have been brought to the surface by complaints before the Commission which were directed toward one or other practices. A review of these proceedings is provided elsewhere in this report. However, such complaints and the ensuing orders of the Commission were narrow in their scope and necessarily dealt with but positions of the entire problem. The scope of this investigation is sufficiently broad to include all phases of the terminal situation to the end that a more permanent solution may be found.

[fol. 1944] 2. *Procedure in Submitting Reports:*

It is the desire of the Commission to treat the problem in two steps. The first is a statement of the problem and of such facts as are necessary to support a preliminary analysis. This report is submitted as such a statement, to be added to or amended, however, by such testimony as may be presented and developed in the hearings. The second will consist of a final report to be made upon the completion of a more exhaustive analysis.

The examination of the operations and activities of certain concerns alleged to be doing business as public wharfingers and/or car loaders and/or warehousemen and without having tariffs on file with the Commission will be conducted during the scheduled hearings.

In addition to the concerns referred to above, there are in operation in the San Francisco Bay area a large number of professional car loading and unloading concerns whose tariffs are on file with the Commission. As the services offered by the terminals embrace car loading and unloading activities, particularly in the East Bay, and as such services are directly competitive with the services and charges of the professional car loaders and unloaders, it may be necessary at a later date to extend the order to include these concerns. Such extension of the order, however, will be delayed until such time as the consideration of the subject of car loading and unloading demands.

[fol. 1945] 3. Brief Statement of the Problem:

We find that two principal problems face the industry. The first is the inadequacy of existing revenues. The second is the diversion of tonnage from one port to another through the device of absorptions.

Considering them in order, the failure to meet operating costs is primarily due to a more or less permanent increase in labor costs and to rate reductions. We believe a solution of this problem embraces the following: First, a scrutiny of the terminal expenditures to the end that unnecessary expenses in the form of absorptions or otherwise be eliminated; and, secondly, a determination of the cost and value of the various services rendered to the end that the respective charge for each shall be reasonable and compensatory. For example, if the toll and other charges against the cargo are not reasonable and compensatory, the immediate task is to ascertain such fact and to prescribe what the proper charge should be.

The completition of this analysis will determine our conclusions and recommendations in the final report. The purpose of the attached preliminary report is to set forth the facts and economic factors that must be considered in such analysis.

The solution of the revenue problem as outlined above may solve in part the problem of tonnage diversion through absorptions. However, all tariffic absorption items have been analyzed at length in this report with the intent that those items may be cancelled which fail to meet such standards of reasonableness as this investigation may evolve.

[fol. 1946] Attention is called to the fact that the major portion of the total dock facilities in the San Francisco Bay

area is controlled by State or Municipal bodies and hence is not subject to the Commission's jurisdiction. Any changes in the present rates, rules and practices of the private terminals can only be made therefore with the full cooperation of these bodies. They have assured us, however, of their keen interest in this investigation and have offered every assistance.

[fol. 1947] PART I

PRESENTATION OF THE PROBLEM

[fol. 1948] 1. Statement of the General Problem:

The marine terminal operator, or wharfinger, stands at the point of interchange between inland and ocean transportation. His revenues accrue from two principal sources, i.e., from charges against the cargo and from charges against the ship, and since he provides an indispensable facility which represents not only a large investment but one costly to maintain, he is entitled to a fair and adequate remuneration for such.

However, the conflicting views of shippers and carriers as to their respective responsibilities toward the wharfinger, as well as early competitive practices grown respectable with age, have resulted in port charges and practices varying widely from port to port and from terminal to terminal within the same ports.

Upon inquiry into the reasons for the existing rates and charges, it becomes apparent that the reasonable cost to render the respective services has been of minor consideration and the wharfinger, in seeking a source of revenue, has placed charges on the basis of what he could get and where he could get it. The bargaining power of the respective parties was a not inconsiderable factor. Rates were never "scientifically" constructed no matter how loosely this term may be used. In fact, the wharfinger or marine terminal business appears to have been a neglected part of the transportation system. No set of guiding principles covering rates, rules or practices appear to have been laid down or recognized.

[fol. 1949] The complexity of the industry is indicated by the Federal Coordinator of Transportation in his report to Congress upon Transportation Legislation (74th Congress,

1st Session—House Document No. 89, pp. 56-57). He states: "The diversity of interests represented by those engaged in furnishing wharfinger service is so great and the practices which have developed in the industry are so lacking in uniformity as to promote widespread discrimination between those using or desiring to use such services. The industry is suffering from over-expension of facilities and destructive competition, causing chronically low earnings."

The series of interviews held with all operators of terminals developed the fact that the existing charges for the many types of services rendered were established on the trial and error basis. Every existing tariff charge of any significance was questioned as to its reasonableness by one or more terminal operators, carriers or shippers. The terminal operators generally expressed the view that the charges for each service should be proper in themselves and expressed the desire that a fair basis of charges for the account of the cargo and the carriers, respectively, be determined and applied.

The first step in this direction appears to be the segregation of those services rendered for the account of the carrier from those rendered for the account of the cargo. Possibly the determination of that point in cargo handling at which the vessel's responsibility ends and the shippers' [fol. 1950] begins, may provide a clue. In any event, it appears only just and reasonable that each should pay for those services and facilities which it uses and requires.

With the charges segregated between the carrier and the cargo, the second step is that of determining what should be properly charged for each specific service rendered. This embraces the determination of reasonable charges for dockage, rentals, service charges, tolls, wharf demurrage etc.

We believe two factors should be used in such determination; first, the specific cost of rendering the services; and secondly, the value of such service to the user i. e., what the traffic will bear. Under ideal circumstances from a regulatory standpoint, it would be necessary to go no farther. An examination and analysis of these two factors should produce a just and reasonable charge. But as indicated above, conditions are not ideal. As a result, two additional factors project themselves into the picture and cannot be ignored. The first is competition and the second is tradition.

Although all these factors may have influenced the existing tariff rates, there can be no doubt that "charging what

the traffic will bear" and "competition" have been the controlling factors. No record could be found of any cost analysis used to develop and substantiate the existing rates, with the exception of some cost studies developed to show the inadequacy of existing wharf demurrage and car unloading charges. The statement of one operator that the [fol. 1951] rates, as far as he knew, were originally "picked out of the air and then revised where the shoe pinched too tightly or to meet competition," may be the answer. Probably from the terminal's standpoint this method sufficed as well as any, provided the gross revenue covered the costs of operation and provided some profit.

Apparently this rate procedure has reached the end of its usefulness. The constant development of new private and public terminals with a consequent diversion of tonnage from older operators and ports, the general effect of the "depression," the continual whittling at the rate level, the offer of gratuitous services under stress of competition, the movement of cargo by truck instead of by rail with consequent loss in car loading and unloading revenues, direct strike costs, and the increase in wages of labor coupled with a decreased labor efficiency have all contributed to the existing situation wherein the present rates provide insufficient revenues. As one operator remarked, "It is like eating soup with a fork. We work hard enough but don't seem to be getting anywhere." A statement of the operating profits and losses for 1930 to date appears for each terminal in the "Supporting Data" provided in this report.

As stated in the introduction of this report, the Commission's jurisdiction extends only to private operators. The California Railroad Commission has no jurisdiction over the rates, rules, regulations, practices, rentals, leases, etc., of the Board of State Harbor Commissioners of the State of California, which controls the harbor front facilities at [fol. 1952] San Francisco, or the Oakland Municipal facilities administered by the Board of Port Commissioners of the Port of Oakland. As these two boards control the major terminal facilities in the San Francisco Bay area, any solution of the problem which does not embrace their voluntary cooperation in the matter of rates, rules, practices, etc., prescribed for the private operators would fail.

It may well be, however, that certain of the difficulties and problems outlined herein have been no respecter of persons

and have dogged the footsteps of the State or municipally controlled terminals as determinedly as those of the private terminals. In any event, the two harbor boards on San Francisco Bay, as well as the City of Berkeley and the Board of Port Commissioners of the Stockton Port District, have expressed the deepest interest in this investigation and have outlined their problems and volunteered to cooperate to the end that the present chaotic situation may be corrected.

[fol. 1953] 2. Division of Terminal Costs between the Vessel and Cargo:

The responsibility of providing adequate revenue for essential terminal facilities can only rest upon the cargo and the carrier, yet the usual play of economic forces in business requires each of these parties to endeavor to assume a little of this responsibility as possible. The more successful the cargo and carrier become in avoiding this responsibility, the greater the problem of the operator in seeking adequate revenues.

The viewpoints of the shipper and the ocean carrier are historically in conflict. The inland transportation shipper is accustomed to a single rate which embraces the use of the railroad freight shed or platform in the movement of his goods between delivery truck and railroad freight car. The payment of an additional charge for the necessary minimum occupancy or use of such terminal facilities while his outbound freight is awaiting transfer to the railroad freight car would appear to him to be but an unnecessary irritation and this view is proper for the same concern provides both the line haul and the terminal facilities and hence the one charge may cover both services. But in marine transportation a third party usually provides the terminal facilities, a practice which from earliest times was necessitated by circumstances. Ocean carriers might unload their cargo at a port or terminal and not return for weeks, months, or possibly years. To maintain port facilities under such conditions was economically out of the question. Ordinary judgment demanded that more efficient use be made of the [fol. 1954] limited landing places nature and man might together provide. In many ports the same facility—pier, dock, quay, transit shed or slip—had to be used by innumerable vessels representing many lines. Thus economic pressure forced the ownership of marine terminal facilities and

wharfinger operations throughout the world into the hands of third parties—some private and some public.

This being the circumstance, the ocean carriers shrank from assuming the responsibility for the handling and care of cargo while beyond their jurisdiction. They have generally held to the theory that their contract of carriage applied from the reach of ship's tackle at one port to end of ship's tackle at another port and that any terminal charges for services beyond ship's tackle were for the account of the cargo.

On the other hand, the shipper has contended that the terminal charges for movement between ship's tackle and point of rest in the transit shed should be included in the ocean carrier's freight rate, i.e., the contract of carriage should begin and end at point of rest in transit shed at point of origin and destination respectively. This question is of more than academic interest for the determination of this point should have some bearing upon the respective responsibilities of the vessel and cargo in compensating the terminal operator for services rendered.

The view of the United States Shipping Board Bureau, Department of Commerce, which administers the existing regulation of water carriers, is pertinent to the point in question. In its decision in Docket No. 96, in Re Assembling and Distributing Charge, decided May 13, 1935, it stated in part as follows:

"In unloading vessels, slins loads of cargo are lowered to trucks on the wharf at ship's side provided by the stevedore, who then removes the cargo to the sheds or other place of rest, where it is set up in piles. In a sling load of general cargo there are likely to be a number of different commodities for various consignees and even for a number of different ultimate destinations, which necessitates a certain amount of sorting. Similarly, in loading a vessel, the carriers frequently assemble in a single sling load cargo delivered to the wharf by several shippers. Respondents insist that their transportation rates are for service from and to ship's side only, but the record is clear that they refuse either to accept cargo for transportation or to make delivery to the consignee at such point. As stated by a witness for respondents 'an attempt to deliver general merchandise to their consignees at ship's side from the various hatches as fast as unhooked from the tackle or to reverse the operation in loading would be physically im-

[fol. 1955]

possible in the space available. It would neither be in the interest of the cargo owner nor the shipowner because it would create an example of inefficiency that would be nothing short of a spectacle.' Ship's side delivery to motor trucks 'would run up the cost to not only the vessel owner but the receiver of merchandise and would delay the receipt of merchandise if an attempt was made to deliver all of it to trucks at the high line.' While the carriers argue that the movement between ship's tackle and pile on dock, including any necessary sorting or assembling, 'obviously involves additional services and costs,' the record here is that the stevedore is "paid by the carriers a single amount for his various services, including the sorting, assembling and handling service in question, and although respondents [fol. 1956] attempted to allocate the cost of this service, not only do the stevedoring contracts of record fail to provide for any lower charge to the respondents in the event cargo should be delivered at ship's side, but the carriers admit that that method of receipt and delivery actually employed by them is less expensive, more efficient and causes less delay. Stevedoring charges are shown to have been reduced in December 1932.

At Portland, Seattle and Tacoma cargo is handled between ship's tackle and pile on dock by agencies separate from the steamship companies, but the charge for this service is absorbed by the intercoastal carriers. At San Francisco, as at Los Angeles and Long Beach, the stevedores perform this service as a part of their stevedoring contracts with the carriers. Rates for intercoastal transportation are the same between Atlantic ports and Los Angeles, Long Beach, San Francisco, Portland, Seattle and Tacoma, and the same form of bill of lading is used for consignments to and from Los Angeles and Long Beach as is used by each carrier for consignments to and from the other ports. According to respondents the transportation rate does not contemplate delivery at point of rest on the wharf beyond ship's tackle but in the case of San Francisco the carriers feel justified in not assessing a charge for the movement between ship's tackle and point of rest due to alleged lower costs to them at that port. No specific reason is given by respondents for the absorption at Portland, [fol. 1957] Seattle and Tacoma of "the charge of handling cargo between ship's tackle and point of rest.

The carrier's undertaking is not only to transport but also to deliver cargo to consignees because transportation, as the United States Supreme Court often has said, is not completed until the shipment arrives at the point of destination and is there delivered. Danciger v. Cooley, 248 U. S. 319; Rhodes v. Iowa, 170 U. S. 412, 415, 420; Vance v. Vandercook Co., 170 U. S. 438, 451; Louisville & Nashville R. R. Co., v. Cook Brewing Co., 223 U. S. 70, 82; Kirmeyer v. Kansas, 236 U. S. 568, 572; Rosenberger v. Pacific Express Co., 241 U. S. 48, 50. Although respondents admit it is their obligation to make proper delivery of the cargo, they urge that delivery beyond ship's side is a separate operation, the cost of which should be borne by the cargo. This view conflicts with that of the United States Supreme Court, as expressed in Brittan v. Barnaby, 62 U. S. 527, 533, 535:—

> 'The word freight, when not used in a sense to imply the burden or loading of the ship, or the cargo which she has on board, is the hire agreed upon between the owner or master for the carriage of goods from one port or place to another. That hire, without a different stipulation by the parties, is only payable when the merchandise is in readiness to be delivered to the person having the right to receive it. Then the freight must be paid before an actual delivery can be called for. In other words, the rule is, in the absence of any agreement to the contrary of it, that freight, under an ordinary bill of lading, is only demandable by the owner, master, or consignee of the ship, when they are ready to deliver the goods in the like good order as they were when they were received on board of the ship. ***The general rule is, that the delivery of the goods at the place of destination, according to the bill of lading, is necessary to entitle the ship to freight. The conveyance and delivery is a condition precedent, and must be fulfilled (3 Kent 218).'

[fo. 1958] "What constitutes valid delivery is well settled by decisions of the courts. It is necessary to show that the goods were landed on the wraf, that the different consignments were properly separated from the general mass of cargo discharged so as to be open to inspection and so placed as to be conveniently accessible to their respective

owners, that notice was given of their arrival and a reasonable time allowed for their removal. If, after being so discharged and separated, the goods are not accepted by the consignee, the carrier should not leave them exposed on the wharf but should store them in a place of safety and so notify the consignee, whereupon the carrier is no longer liable on his contract of affreightment, Southern Pacific Co., v. Van Hoosear, 72 Fed. (2nd) 993; Clifford v. Merritt Chapman & Scott Corporation, 57 Fed. (2nd) 1021; 'The Eddy,' 72 U. S. 481; 'The Titanic,' 131 Fed. 229. A mere discharge of cargo is not delivery and until the goods are so placed and tendered for delivery it is impossible for the consignees to receive and remove them. The service for which the assembling and distributing charge under consideration applies is necessary to effect orderly and expeditious delivery. It promotes the dispatch of vessels, minimizes congestion and confusion at ship's side and thus aids in the handling of a larger volume of cargo than could be adequately and economically handled at ship's side. If the shipper pays for delivery at ship's tackle and does not receive it but instead is obliged by the steamship companies to take delivery from place of rest on dock, which delivery costs the carriers not more but less, he may not be com- [fol. 1959] pelled to pay additional charge upon the assumption that he has received an additional service. The United States Supreme Court has held that a carrier may not charge the shipper for the use of its general freight depot in merely delivering his goods for shipment nor charge the consignee of such goods for its use in merely receiving them there within a reasonable time after they are unloaded. It is not within the power of the carriers by agreement in any form to burden shippers with charges for services they are bound to render without any other compensation than the customary charges for transportation. Covington Stock Yards Co. v. Keith, 139 U. S. 128, 135, 136."

The Shipping Board Bureau in this decision ordered the respondent carriers to cancel the assembling and distributing charge (assessed against cargo for use of terminal facilities, equipment and labor incident to handling between ship's tackle and pile on dock, including ordinary sorting, piling and breaking down), on intercoastal cargo at Los Angeles and Long Beach.

It appears that as the water carriers' service becomes an increasingly important and dependable part of the national common carrier transportation system, and furthermore becomes subjected to government regulation, its responsibilities more and more closely approach those of the common carrier by land.

The thought is advanced that it matters not who pays the charges as the shipper ultimately pays for everything. This "meat axe" view overlooks the fact that the burdens may as readily fall on the wrong shipper as the right one, or that a steamship line may be forced into bankruptcy [fol. 1960] through an undue burden before it can adjust its own rates and pass the charge on to the consumers.

For example, offshore vessels charged half dockage or exempted from dockage at the East Bay terminals throw an undue burden upon the Coastwise and Inland Waterway trades which pay full dockage. We feel this discrimination is not removed by the supposedly compensatory practice of charging the offshore shipper a 15 cent toll and the Coastwise and Inland Waterway shipper only a 5 cent toll. This disparity in toll charges is accepted almost as an institution in the Bay area, yet we were unable to find any operator who volunteered to justify this differentiation and it was only with difficulty that we located a party who could explain the origin of it. In 1917 the shipowners demanded reduced charges against the vessel at San Francisco, pointing to the free ports advertised at Portland and Seattle, and in particular calling attention to a certain shipload of Ceylon rice which the captain had refused to discharge at San Francisco because of the charges against the vessel. Instead he sought the free ports to the north where the California buyer was forced to take delivery. It should be mentioned that these ports were free to the vessels only as charges were assessed against the cargo.

For many decades San Francisco was the only port of importance serving California; there was no problem of attracting vessels and as a result the Board of State Harbor Commissioners had no difficulty in applying the theory that the cost of operating marine terminals should be borne [fol. 1961] about equally by the vessel and the cargo. Seattle and Portland, on the other hand, found the vessels reluctant to go north and as an inducement assessed little or no charge, placing the burden of supporting the terminal

principally against the cargo, where it still rests today. At the time the Offshore lines made their appeal in 1917, all ships paid equal dockage and all cargo paid 5 cents a ton toll.

The Board of State Harbor Commissioners was sympathetic to the plea of the vessels and agreed to remove the dockage charges if another source of revenue could be found to offset the losses thereby incurred. A committee representing Offshore, Coastwise and Inland Waterway carriers, as well as the shippers, was created to study the problem. It recommended that the tolls be raised to 15 cents a ton to compensate for the elimination of dockage. This was done. Apparently here was a case where the cargo was found able to bear the charge while the vessel could not. As there was no competitive need for reducing the charges against the Coastwise and Inland Waterway carriers, the committee concluded that there was likewise no justification in raising the toll on Coastwise and Inland Waterway cargo. Hence in these trades it remained at 5 cents per ton and this is the charge today.

Portland and Seattle are no longer free ports, although the bulk of the charges still rest against the cargo. The justification for the spread between the 5-cent and 15-cent tolls no longer exists, yet to change them would be difficult if for no other reason than that shippers and the carriers have become adjusted to them. Nevertheless, as a result the Coastwise line may be bearing some of the bur-
[fol. 1962] dens of the Foreign steamship company and in return the Foreign shipper may be bearing a portion of the Coastwise shipper's load, but the two are by no means equal in their incidence.

It may not be possible in this investigation to make an exact division of the terminal cost burden between the vessel and the cargo, but we believe that the recognition of the existence of such a division is a prerequisite to a solution of a terminal rate problem and should be given proper recognition in common with other factors.

[fol. 1963] Lack of Uniformity in Method of Assessing Charges at San Francisco Bay Ports:

In a study of the rates, rules and practices in effect at the different terminals around the San Francisco Bay, it is necessary that an understanding be had of the difference

in nature and amount of the charges assessed against the cargo and the carriers.

The principal differences exist between the San Francisco waterfront facilities on the one hand (owned by the State and controlled by the Board of State Harbor Commissioners), and the East Bay terminal facilities at Oakland, Alameda and Richmond.

The difference in charges may be more easily understood by first pointing out the two distinct types of operation here found. Considering first the operation at San Francisco, the piers on the San Francisco waterfront, with the exception of Nos. 45 and 56, are assigned to one or more steamship companies on either a "regular monthly assignment" basis, for which a wharf rental charge is paid, or upon a "temporary assignment" basis.

The "regular monthly assignment" includes only the *preferential right* of the applicant to dock his own vessels at such berth, and the Chief Wharfinger of the Port may use the berth or pier when unoccupied for other operations as he may deem expedient. The steamship lines, however, have maintained their own terminal organizations at such assigned piers and they are, for practical purposes, generally open only to the vessels of the assignee.

Turning to the second type of operation, it is found that Piers Nos. 45 and 56, operated respectively by the San Francisco Terminals and the State Terminal Company, [fol. 1964] Ltd., and likewise all the East Bay ports at Oakland, Alameda and Richmond are operated on the "open terminal basis." Each terminal is open to the vessels of all lines on an equal basis. Conversely, cargo is assembled at each terminal for all vessels which call. The terminal organization is maintained by the terminal operator or wharfinger and, unlike the situation at San Francisco, is completely divorced from carrier control.

Not only are the "open terminals" in direct competition with one another, but they are highly competitive with the steamship lines' private terminal organizations at San Francisco. Carriers having assigned piers on the San Francisco waterfront and bearing a fixed overhead cost desire to handle all or as large a portion as possible of their cargo over their own piers. The "open terminals," on the other hand, endeavor to attract as much tonnage as possible not only for direct revenue purposes but also

to attract the necessary steamship services. With this background, the essential differences in the charges assessed under the two types of operations can be pointed out.

Considering first the charges against the carrier, the Board of State Harbor Commissioners controlling the San Francisco waterfront assesses monthly wharf rental on a square foot basis, plus a dockage charge based on the net registered tonnage or underdeck tonnage measurement of each vessel docking. On the other hand, the East Bay terminals do not make a rental charge nor do they assess dockage except on Coastwise and Inland Waterway trades.

On the other hand, the East Bay terminals assess the Offshore vessel a service charge averaging about 40 cents [fol. 1965] a ton on outbound cargo and 50 cents a ton on inbound cargo. A somewhat lower charge is assessed against the Coastwise and Inland Waterway vessels. The Board of State Harbor Commissioners at San Francisco makes no such charge. The terminals assessing such a charge maintain that it is made up of two factors: the first, a charge for the use of the slip and the use of wharf facilities to which the vessel may tie up and from which it may receive and discharge cargo. They hold this factor to be equivalent, in principal at least, to the dockage charge assessed at San Francisco except that it is based on tons loaded and discharged instead of upon the net registered tonnage of the vessel. The remaining portion of the service charge provides compensation to the operator for various services rendered the vessel. These services are defined on page 132 of this report.

Turning to the charges levied against the cargo, we find the following tariff items in effect: Tolls (usually termed wharfage elsewhere), wharf demurrage, storage, car loading and unloading, and miscellaneous charges for weighing, use of special dock equipment, case labeling, scraping and remarking cases, stenciling, tagging, wire strapping, tarring, consolidation of goods into pool cars, etc.

Considering these items in turn, it is found that the charge for toll in general is uniform around the Bay. Wharf demurrage is assessed on the basis of per day, per five days, per seven days, per twenty days, per thirty days or per season, with widely differing rates for the equivalent [fol. 1966] lent period at competing terminals. At some points demurrage is on a penalty basis and at others on

a storage basis. Free time ranges from five to twenty-one days. Car loading and unloading charges are generally uniform.

Not only has there been a lack of uniformity in the methods of levying charges at different terminals, but an almost equal difference exists in the charges levied at any one terminal against the various trades. For example, at the East Bay terminals vessels engaged in the Coastwise and Inland Waterways trades pay dockage while loading cargo. Offshore vessels engaged in the Intercoastal, Hawaiian, Alaskan, Trans-Pacific and Foreign trades are accorded free dockage under identical circumstances. At San Francisco no vessels are accorded free dockage.

The rates of toll similarly vary. The toll against cargo carried in the Coastwise and Inland Waterway trades is uniformly 5 cents per ton, but is 15 cents per ton in the Offshore trades, Intercoastal, Hawaiian, Alaskan, Trans-Pacific and Foreign services.

Uniformity in the method of assessing charges is naturally desirable but long custom and practice, coupled with fundamental differences in the types of waterfront operation in the San Francisco Bay district, will probably prevent any real progress in this direction. However, it is by no means necessary that there should be uniformity. On the other hand, it is very essential that there be an equality in these charges, whatever the method used in applying them or the title used to designate them. A variation in terms and definitions must not be used as a tool or a cloak to gain unwarranted competitive advantages over [61 I.C.C. 1967] neighboring terminals. Such practices merely result in accusations, bad faith, retaliatory measures, indirect and confusing forms of rate cutting and losses in needed revenues. It is this situation we find among the San Francisco Bay terminals today. If the present differences in assessing charges are to be retained, then our problem is that of analyzing and defining them to the end that the burdens they place upon the carriers and cargoes may be somewhat equivalent.

This subject of uniformity in the method of assessing charges has been the topic of innumerable conference and association activities for many years on both Pacific and Atlantic coasts. On the west coast the Pacific Coast Association of Port Authorities has been the body most active.

With the object of stabilizing port practices and charges, this association, late in 1933, appointed a committee to evolve a program in this direction. Representatives of this committee have requested that this goal of uniformity be kept in mind during this investigation to the end that any changes made in rates, rules or practices locally shall, if possible, be in the direction of greater uniformity with practices elsewhere on the Pacific Coast.

[fol. 1968] 4. Government Ownership and Operation:

The Bay district exemplifies practically every degree of government, semi-government and private ownership and/or operation. In fact, among the general cargo wharfingers, the Encinal Terminals is the only facility fully privately-owned and operated. Various degrees of government ownership and control are exercised at the remaining general cargo facilities. The State owns all the facilities on the San Francisco waterfront where its investment in land, building, structures and equipment, as of 1932, the date of its last biennial report, totalled somewhat over $99,000,000. Of this amount $55,000,000 represent the buildings, structures and equipment. While the Board of State Harbor Commissioners prescribes and retains all rentals, tolls, dockage and wharf demurrage charged for the use of its facilities, the State itself conducts no physical operation.

The level of the charges is governed by the statutory requirement that neither a profit nor a loss shall accrue from the operations. Out of gross earnings the Board of State Harbor Commissioners is required to meet its own operating and maintenance costs, interest charges on harbor bonds and the redemption of such bonds as they mature. This it has successfully done throughout its history.

The Port of Oakland operates the major portion of its harbor facilities through a Board of Port Commissioners. All rates, rules and practices on public wharfinger facilities directly operated or leased by the Board are exclusively under its control, with the one exception of facilities under [fol. 1969] lease to Howard Terminal. The City of Oakland has expended from bond issues and tax levies for its port terminal and transportation facilities, including dredging and maintenance costs, approximately $12,500,000, to which should be added about $1,000,000 of terminal earnings reinvested in the plant. The revenues from the port prop-

erty, both operating and non-operating; are used to meet operating expenses, with any surplus accruing invested in additions and betterments. In addition, certain new structures are being financed in part by direct federal grants up to 45 per cent of the cost. The interest and redemption charges upon the port bonds are paid by the city from its general-tax income.

The City of Richmond port facilities represent a third type of operation wherein the facilities were constructed in part by the City of Richmond and in part by the Parr-Richmond Terminal Corporation. Land ownership is similarly divided. The privately owned portion of the facilities is free from city taxes, as is of course the municipally owned portion. The municipal facilities are operated under lease to the Parr-Richmond Terminal Corporation, which concern has full control over all rates and charges assessed at the Port. The interest and redemption charges against the port bonds are met by city taxes. At the facilities which are jointly owned by the city and the corporation, the profits are shared in proportion to ownership. However, all profits belonging to the city accrue to the Parr-Richmond Terminal Corporation until such time as the latter is fully reimbursed thereby for all investments at the Port.

The operation at the Berkeley Municipal Wharf is on a [fol. 1970] still different basis. The City of Berkeley leases a shedded wharf, known as the Berkeley Municipal Wharf, to J. M. Atthowe, an individual doing business as Berkeley Transportation Company, for a period of three years at $100 per month. All wharfinger charges are established by city ordinance. The facility is not served by any railroad and is on shallow water served only by bay or river watercraft.

While the Port of Stockton is about 80 miles inland from San Francisco Bay, its activities in the two years of its operation have had a competitive bearing upon the older public and private terminals on the Bay. All the publicly owned port properties are under control of the Stockton Port District, which is governed by the Stockton Port Commission, a body composed of five businessmen serving without salary. The Port District represents a total investment of local, state and federal funds to the amount of $8,774,121 in terminal, warehouse and railroad facilities; dredging of

32-foot ship channel, land, rights of way, spoils disposal and lighting of waterway for night navigation. The Port District's investment in the structures and facilities totals $1,379,334. Its revenues are derived from rentals and operation of the different facilities, together with services rendered for dockage, assembling and delivery of cargo, demurrage, tolls, etc. The District has issued $900,000 in General Tax Bonds and $155,000 in Revenue Bonds. Interest charges and bond redemption are met by tax levies upon the Port District.

The following question inevitably arises under such competitive conditions as those described above: "Should [fol. 1971] the port terminals built at public expense be considered as a community investment made for the purpose of attracting commerce in the expectation that the indirect benefits will adequately recompense the public; or should such public port development be operated on a remunerative basis as is necessary when private capital is invested in such improvements?"

This question is naturally of extreme interest to the private terminals in direct competition with public terminals. While there is no unanimity of opinion among public port authorities throughout the country, the representatives of the Board of State Harbor Commissioners, the Port of Oakland and the Stockton Port District have expressed the view that the rates and charges imposed should be upon the same basis as that required by a private operator.

The proposed development of additional municipal port facilities in San Francisco Bay and its tributary waters points toward additional problems to which passing attention might here be called.

No certificate of public convenience and necessity is required of the Railroad Commission for the development of new private port facilities and of course the Commission has no control over government projects. As private and public bodies, particularly the latter, become more and more port conscious, with the consequent construction of new ports, it may well ensue that the terminal capacity may greatly exceed the needs of the available traffic. In such instance, question arises as to who should carry the burden of such excess plant capacity and capital investment. The [fol. 1972] logical answer to such a situation is the provision of some control over the construction of new facilities. The

absence of such control makes it increasingly difficult for a regulatory body to assure the private terminals of a reasonable return and for state and municipal ports to pay their way independently of the tax payer. But as a practical matter we can merely point out that such control does not exist today. The answer must be found elsewhere. It appears to us that two courses are open; the first, is an increase in the charges against the vessel or the cargo, or both, to compensate for the unused capacity; the second method, and the one most reasonable from the standpoint of the users of the service, is to charge a rate adequate to the needs of the favorably situated terminals and permit the remainder to struggle along with the aid of the local taxpayer, upon the theory that the latter will be recompensed by indirect benefits. The ports having the most favorable situation and possibly assured of a minimum tonnage by one or more large shippers will continue to attract vessel services and tonnage, while losses will fall upon the remainder.

As stated above, we do not know what, if anything, can be done about this problem, but in accordance with the expressed purpose of this preliminary report, we desire to comment on a trend that apparently can only result in increased burdens to the vessel and cargo or loss to a portion of the terminal operators.

[fol. 1973] 5. Increased Labor Costs:

The principal need for greater revenues apparently arises from increased labor costs, and, in view of the significance of this item, full explanation is warranted.

Labor inefficiency and its consequent expense to the terminals can be divided into two groups, viz.,

(a) That which exists in connection with stevedoring operations over which the terminals have little or no control.

(b) That which prevails in purely terminal operations involving the use of labor paid by the terminal.

While the two lose their identity in certain operations, such as cases where longshore labor unloads cargo from vessels to be immediately loaded to cars by terminal labor, for purposes of illustration we can regard the two separately.

1. Longshore Labor Inefficiency and its Effect Upon the Terminal:

Using the loading of canned goods and dried fruits to vessels as an illustration, prior to the longshoremen's strike of 1934 the average vessel loaded between 25 and 35 tons per hour per gang, depending upon the type of the vessel, its gear and the stowage problems involved. Since the strike, the average loading speeds obtained have been between 10 and 20 tons per hour and many steamer operators use a hypothetical figure of 15 tons per hour in calculating the dispatch of their vessels. This comparison is substantiated by a statement of an employer group, including the principal stevedoring operators of the port, in which it was revealed that the efficiency of longshore labor has decreased 45 per cent from the level that prevailed prior to the strike. Individual stevedore employers state that the decrease in [fol. 1974] tonnage loaded per gang per hour is as great as 60 per cent. In the loading of petroleum products in packages, the number of barrels loaded per gang per hour has declined from an average of 225 to 115.

This decrease is brought about in two ways; first, through limitation in the tons of cargo handled per gang per hour, and secondly, through the gradual imposition of certain cargo handling rules and restrictions upon the employers which have the direct effect of decreasing the efficiency of certain operations.

To illustrate the latter situation, cargo is moved from its place of rest on the dock to the ship's tackle by means of trailers which are drawn by small tractors. The cargo is placed on the trailers on top of a sling board which is the medium by which the cargo is hoisted into the vessel's hold. Through restrictions applied by the longshoremen, the loads are confined to thirty-five cases of canned goods, weight 60 lbs. each or more, whereas formerly each load consisted of forty cases. In the handling of dried fruit, the loads are restricted to seventy-two 25 lb. cases, whereas formerly one hundred cases was considered to be a fair and safe load. Concerned in this same operation, the longshoremen refuse to haul more than two trailers with each tractor, whereas formerly as many as four were hauled when long trucking distances were involved.

As can be readily seen, these conditions have led to a great decrease in the loading and unloading speeds of vessels,

thus requiring that a vessel remain longer at each loading [fol. 1975] berth. The inauguration of the six-hour day after which overtime rates of pay prevail, as defined in last year's award of the National Longshoremen's Board, has had the effect of altering steamer schedules to provide additional time in each port. Thus, a vessel calling at four piers or terminals in San Francisco Bay will frequently remain at each dock for a full day instead of completing her calls in two days as was formerly possible. This has the effect of reducing the number of berths available at each terminal for the accommodation of vessels within a specific period. This lack of berths forced the terminals to bear added costs in the form of overtime, stevedore traveling time and transfer charges on cargo, all occasioned by the terminal's endeavor to meet its operating obligation to the vessel.

The longshoremen have instituted certain rules as to the height that cargo will be piled upon the floor of the dock when discharged from a vessel. To examples of the effect that this has upon the terminals may be had in the instance of vessels discharging cases of pineapple and bags of sesame seed, two commodities which move in large volume. In the case of vessels discharging pineapple, it was formerly the practice of the longshoremen to pile the cases eight high, which is approximately seven feet. Through recent action of the longshoremen, this standard has been reduced to seven cases or its equivalent in height. To illustrate the effect that this move has upon a terminal, a vessel discharging 100,000 cases of pineapple now requires approximately 2,500 square feet of floor space more than was previously necessary. In the case of sesame seed, the longshoremen [fol. 1976] previously piled the bags five high on the dock. Now they limit the piling to four bags high which has the effect of increasing the space requirements by exactly 25 per cent. Many other commodities offer the same problem which, combined with the fact that vessels are slower in picking up their cargoes than formerly, has the effect of forcing the terminal to provide additional floor space or engage in highpiling operations which involve an expense for which the present rates are not designed to provide.

There is no accurate means of determining what increased space requirements have been imposed upon the terminals by the actions of labor but our observations lead us to believe that the facilities would have to be increased in the

neighborhood of 20 per cent to accommodate cargoes on a basis which would be comparable to that which existed prior to the strike. In other words, it would be necessary to build more facilities to handle the same or less tons than were handled prior to the strike, while the revenues would remain unchanged.

2. Terminal Labor Inefficiency and Its Effect Upon the Terminal:

The inefficiency of terminal labor is due to the unskilled type of labor available and to the rules and practices now applied by labor.

The inefficiency of terminal labor became apparent during the early months of 1935 when the majority of experienced car loaders left the employ of some terminals to engage in longshore work. The new men available for this work lacked the required experience and physical qualifications. The resultant increase in car unloading cost is [fol. 1977] enumerated in the following comparison of such costs for 1933, 1934 and 1935. The values were computed throughout upon the basis of the present straight time wage of 72½ cents per hour. These costs were obtained from the Encinal Terminals' records.

Unloading Cars	Canned Goods			Dried Fruit		
August, September and October	1933	1934	1935	1933	1934	1935
Direct labor cost per ton	$.2033	$.2452	$.2904	$.2299	$.2776	$.3265

Double handling of cargo which previously did not exist is another practice forced on the terminals. As an example, consider the case of a vessel discharging cargo, a portion of which is to be trans-shipped to a vessel loading in an adjacent berth. Prior to the strike the longshoremen in the hold of the first vessel would have loaded the cargo upon "flats" which would have been hoisted to the dock, picked up by electric trucks and transported to the side of the loading vessel from which point they would be hoisted into the hold for unloading. Under present practices, the longshoremen unloading the first ship will only place the cargo on the dock from which point terminal labor must load it to "flats" or trucks for transfer to a point near the loading ship. Then terminal labor must unload the freight from these "flats" or trucks as the longshoremen of the second

vessel will only receive it from the floor of the dock. In short, four additional handlings upon the dock are now required. In addition to the above-mentioned decline in labor efficiency, there have been substantial increases in the hourly rates of pay. For example, East Bay terminal labor [fol. 1978] received up to the fall of 1934 from 50 cents to 60 cents per hour straight time and from 50 cents to 90 cents per hour overtime. This labor now receives 72½ cents per hour straight time and $1.07½ per hour overtime. At San Francisco the hourly rate has remained unchanged at 85 cents for straight time and $1.20 for overtime. East Bay dock checkers formerly receiving from 50 cents to 75 cents per hour straight time and 50 cents to $1.10 per hour overtime now receive 85 cents per hour straight time and $1.20 per hour overtime. These latter rates have been in effect at San Francisco for several years.

3. Effect of Increased Rates of Pay for Dock Employees Upon Office, Traffic and Executive Departments:

The increase of hourly wages to 85 cents for straight time and $1.20 for overtime for daily men engaged in checking, tallying, spotting, delivering and receiving cargo on docks and piers has had the effect of increasing the earnings of the daily checker to a point where he has equalled or exceeded the checker employed by terminals on a monthly basis. This forced an adjustment in the salaries paid by certain of the terminals to their checkers on a monthly basis. The increase in wages of employes on an hourly basis has similarly necessitated comparable adjustments in the salaries of clerical forces in executive, traffic and other departments.

There appears to be no doubt that terminal labor costs have increased substantially.

[fols. 1979-1984] 6. Dockage:

Dockage is the charge assessed against the vessel for berthing at a wharf, pier or sea-wall structure or coming within a slip, channel, basin or canal. It is imposed to compensate the terminal for the facilities necessary to the berthing of a vessel. At the present time dockage charges are applicable upon all vessels using the San Francisco docks under the jurisdiction of the Board of State Ha-bor Commissioners. In general, no dockage is charged upon vessels

using East Bay terminals, with the exception of the Coastwise and Inland Waterway trades.

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[fol. 1985] 7. Service Charges:

The service charge in effect at the East Bay terminals and at the San Francisco Terminal and State Terminal, Ltd., in San Francisco, is a charge assessed against the vessel for one or more of the following services rendered:

1. Arranging berth for vessel.
2. Arranging cargo space on wharf.
3. Checking cargo to or from vessel as required.
4. Receiving outbound cargo from shipper.
5. Delivering inbound cargo to consignee.
6. Preparing manifest or tags covering cargo loaded aboard vessel.
7. Preparing "over," "short" and "damage" reports.
8. Ordering cars.
9. Giving information to shippers and consignees regarding cargo, sailing and arrival dates of vessels.
10. Lighting wharf.

These services do not include any labor for handling cargo.

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[fol. 1986] 8. Tolls:

Tolls is the charge for cargo conveyed on, over, or through a terminal facility, or loaded or discharged while the vessel is berthed at a terminal facility. It is a charge against the cargo although in practice it is assessed against and collected from the steamship companies who in turn collect it from the shipper or consignee. The charge for tolls is five cents per ton on Coastwise and Inland Waterway cargo and fifteen cents per ton on all other trades. In addition a limited number of specific commodity rates are quoted in all trades.

As a means of increasing revenues, various terminals suggested as one source an increase in the toll charges. A comparison of toll charges assessed at other ports is provided in the following table.

Table Showing Toll (Wharfage) Charges at Leading Ports – 1935

Port	Cents per Ton	Description
Vancouver, B. C.	50	All trades
Everett, Wash.	50	All trades
Seattle, Wash.	50	All trades
Tacoma, Wash.	50	All trades
Gray's Harbor, Wash.	50	All trades
Portland, Oregon	50	All trades
San Francisco Bay Ports, California:		
San Francisco, Alameda, Oakland, Richmond, Stockton	5	Coastwise & Inland Waterway
	15	All other trades
Los Angeles, California	15	All trades
Los Angeles Outer Harbor Wharf and Dock Company	10	All trades
[fol. 1987]		
Long Beach, Calif.	10	All trades
San Diego, Calif.	10	All trades
Galveston, Texas	25	Inbound traffic
	50	Outbound traffic
Houston, Texas	25	All Coastwise and Intracoastal traffic; import and inbound Intercoastal traffic
	50	Export and outbound Intercoastal traffic
New Orleans, Louisiana	15	All trades
Charleston, South Carolina	20	All trades
Baltimore, Md.	12	Top wharfage on all traffic
	6	Side wharfage
	None	When rail line haul
Philadelphia, Pa.	None	
New York City, N. Y.	None	
Boston, Mass.	25	All trades
Portland, Maine	60	On all traffic, including handling charge

Source of data: Port and Terminal Charges, Corps of Engineers, U. S. Army, War Department, 1935 Series.

An examination of the table reveals that the toll charges in the San Francisco Bay district are much lower than those assessed at all of the North Pacific Coast ports. The 5-cent and 15-cent charges of the former are to be compared with the 50-cent charges of the latter. On the other hand, the Bay district charges compare more favorably with the Southern California ports with their 10-cent to 15-cent toll charges. The local Coastwise rate of 5 cents, however, is the lowest on the coast. The charges at Texas ports are higher again, ranging from 25 cents to 50 cents. The New [fol. 1988] Orleans charges of 15 cents is the same as the Bay district Offshore charge. The charges on the Atlantic Coast vary from free toll up to 60 cents per ton, but comparisons are difficult because the services rendered are not equivalent. In fact, at North Atlantic ports, tolls (wharf-

age) is the exception rather than the rule and at the few ports where it is assessed, the railroads absorb the charge in their line haul rates. At Portland, Maine, the toll includes handling.

An obstacle to raising toll charges to increase terminal revenues lies in the fact that at the State Terminal Company, Ltd., and the San Francisco Terminals, the Board of State Harbor Commissioners collects 100 per cent of the tolls, while at the Howard Terminal, Oakland, the Port of Oakland receives all tolls from cargo moving over the quay wall berth (No. 3) and a portion of the tolls earned on the remaining two piers.

Recommendations for increases in toll charges, as in the case of any other charge, should be capable of justification. They should be related to the services rendered, i. e., they should be fair, reasonable and justifiable of themselves without passing a burden on to other services or having to carry a burden properly chargeable elsewhere.

The point has been raised that any increase in toll charges would drive traffic to Portland, Seattle or Los Angeles. This is no doubt true for a portion of the traffic, but the bulk would be unaffected.

The difference between the five-cent and fifteen-cent per ton charges on Coastwise and Offshore trades, respectively, is questioned. There seems to be little justification for this [fol. 1989] difference. It is necessary to point out that at San Francisco the monthly wharf rentals charged Coastwise and Inland Waterway trades by the Board of State Harbor Commissioners are $.012 per square foot, or double the $.006 charged Foreign or Offshore trades. Furthermore, Coastwise and Inland Waterway vessels pay full dockage while discharging cargo in addition to the above monthly rental. Under such circumstances the Offshore lines pay half dockage. At East Bay terminals the toll charge is likewise five cents and fifteen cents on Inland Waterway and Offshore trades, respectively; while at the same time a dockage charge is assessed against the former and not assessed against the latter.

No doubt the increased charges against the Coastwise and Inland Waterway carriers offsets in some degree the low toll charge against the cargo. However, comment has been made earlier in this report on the inconsistency of assessing a low charge against the cargo to offset a high

charge against the vessel. Two separate parties are concerned and the adjustment of the burden between them is far from being automatic. However, the carriers and the cargo have evidently become adjusted to the relationship and while belief was expressed that the two tolls should be the same, hesitancy was shown toward taking the necessary readjustment steps.

Question is raised concerning practices of charging toll on cargo barged from the East Bay to San Francisco terminals for account of the steamship line. Does the Offshore toll of 15 cents or the Inland Waterway charge of 5 cents apply? The tariffs do not clearly specify which.

[fol. 1990] A further problem arises in connection with the charging of toll upon trans-shipment cargo which moves out of the custody of the terminal between its receipt from one vessel and its delivery to another. The tariffs uniformly provide that inbound cargo on which tolls have been paid and which has been landed on the wharf and not removed therefrom may be reshipped from the same wharf without the payment of a further toll. However, where warehouses are adjacent to the wharf or terminal property, question arises as to whether or not cargo has been removed to such warehouse, held and returned to the terminal for shipment at the payment of one toll charge.

[fol. 1991] 9. Wharf Demurrage and Storage.

Every terminal operator in the Bay area held the existing rates and practices covering wharf demurrage and storage to be very unsatisfactory. Wharf demurrage is defined as that charge accruing upon cargo left in the position of the terminal beyond the free time period.

Wharf demurrage was originally a penalty charge to ensure that goods would not remain on the docks for a longer period than was reasonably necessary for the carrier or consignee to remove them. If the shipper or consignee desired the goods held, they were left in storage areas for which a penalty wharf demurrage rate was assessed, plus a handling charge in some cases. But today, under the influence of competition, the wharf demurrage rates have been so reduced and the rules and practices so liberalized that it is difficult to distinguish between demurrage services on the one hand and warehouse storage service on the other. This is particularly true where goods are held

under both demurrage and warehouse storage in the same transit shed as Encinal & Howards. The only differences existing appear to be in responsibility of the terminal in case of storage to deliver the goods to the tail-gate of the truck, while under wharf demurrage the truck comes to the pile. Other services, such as handling, keeping of records, protection and checking deliveries are about the same in either case. The cargoes may be placed in adjacent piles on the wharf and delivered in small lots to the consignees. Both cargoes may have to be repiled by the terminal to release valuable space necessary to its operations. Yet the demurrage rate at the East Bay terminals of 1½ cents per ton per day chargeable on canned goods and other [fol. 1992] commodities is so low that the shipper may leave it on demurrage for extended periods before it equals the storage charges. Terminal operators state the demurrage charges fail to compensate them for the valuable space occupied and the services and responsibilities incidental to handling such cargo, particularly where the goods must be moved or high-piled. In fact, goods paying demurrage may be high-piled one day at the terminal's expense and delivered the next with no compensation other than the 1½ cents per ton per day. The cost of high-piling alone averages between 20 cents and 25 cents per ton. The terminal is thus forced to gamble upon the length of time the goods will remain in storage, hoping that if it has had to shift or handle the goods in any manner, they will remain long enough to compensate it for such expense. As a result of the breakdown of demurrage rates, even distribution accounts necessitating many small deliveries are being held on demurrage rather than upon storage rates.

The rates for wharf demurrage assessed by the terminal operators on the east side of the Bay are generally based on a per diem basis without a charge for "handling." The rates at all the San Francisco piers and terminals are on a period basis but with no charge for handling, except in some instances at the terminals. The "uptown" warehouses, and so far as we have been able to determine, there "handling" charge. The rates at the terminals on San Francisco Bay, generally speaking, are a very small percentage of the competitive rates in the "uptown" warehouses, and so far as we have been able to determine, there is no equitable justification for such depressed charges.

[fol. 1993] To illustrate, under the existing situation a shipment of canned goods is offered to a terminal for storage. To conserve space it is piled above the normal height, at an additional cost to the terminal which might reach 25 cents per ton. An additional cost is incurred to break down the pile. The owner of the goods can store them for a few days, even as short a period as one day, for which he would be charged 1¼ cents per ton with no charge for piling and unpiling. There appears to be no sound reason for this situation, other than that not all the terminal operators are agreeable to changing the practice.

The following illustration will serve to show the disparity in rates charged by the terminals and the rates charged by the warehouses.

Assume a shipment of 1,000 cases of canned goods weighing 50,000 pounds, received for storage on June 1st—the charges would be:

Storage charge at Warehouse	Storage—1.2c Per case per month
June 1-July 1	$12.00
July 1-Aug. 1	$12.00
Aug. 1-Sept. 1	$12.00
Sept. 1-Oct. 1	$12.00
	$48.00
Handling at 2.25c per case	$22.50
Total	$70.50

[fol. 1994] Wharf Demurrage at East Bay Terminals:

Period	1¼¢ per ton per day—after free time of 10 days, excluding Sundays and holidays.
June 1 to June 13—free	
June 14 to June 30—17 days	$5.31
July 1 to July 31—31 days	9.69
Aug. 1 to Aug. 31—31 days	9.69
Sept. 1 to Sept. 30—30 days	9.38
Total	$34.07

Wharf Demurrage at San Francisco Terminals:

Period	
Free time—10 days excluding Sundays and holidays	
Next 20 days—15 cents per ton	
Next 30 days or fraction thereof—25c per ton	
Next 30 days or fraction thereof—30c per ton	
Each succeeding 30 days or fraction thereof—30c per ton	
June 1-July 13—Free	
June 14-July 3—20 days at 15c	$3.75
July 4-Aug. 2—30 days at 25c	6.25
Aug. 3-Sept. 1—30 days at 30c	7.50
Sept. 2-Oct. 1—30 days at 30c	7.50
Total	$25.00

Tables shown in Appendix of this report further amplify the wide variation in rates. They show a comparison of the wharf demurrage charges assessed on various commodities for different periods of time at the several ports and terminals on San Francisco Bay. The warehouse rates applicable at either terminal warehouse facilities or at "uptown" warehouses are also shown.

We believe a sound solution of this problem would be the assessment of a "penalty" charge upon cargo held under wharf demurrage beyond the free time. On the other hand, goods under storage would be assessed a storage charge on a period basis plus a charge to cover the ordinary labor and duties incidental to receiving, storing, piling and de- [fol. 1995] livering of the goods.

The shipper or consignee should be given an option upon the expiration of the free time as to whether the goods were to be held under wharf demurrage or storage. This procedure would require shippers leaving goods beyond the free time to pay a charge having some relation to the actual out-of-pocket cost of the terminal and the use obtained of the facility.

The rates established should be based upon terminal costs and be fully compensatory.

[fol. 1996] 10. Free Time:

The free time is the time allowed for assembling cargo for outbound water movement or for removing cargo dis-

charged from vessels or other watercraft before the assessment of wharf demurrage charges.

The free time allowed at the various terminals on the San Francisco Bay has been a source of friction among the operators. Beginning with an allowance of five days, it has been extended under pressure of competition to ten days and in certain circumstances to twenty-one days. In fact, the limit is indefinitely extended when vessels are delayed. Thus the most valuable operating space on the floor of the transit sheds is deprived of its most effective use.

The shipper is entitled to reasonable opportunity to deliver and assemble his goods on the dock prior to the vessel's arrival. The consignee likewise is entitled to a reasonable period in which to remove them. The problem is the determination of this reasonable period. If it is too short, it unduly inconveniences the shipper. If it is too long, it constitutes an uneconomic use of valuable space for which the average shipper can ill afford to pay, whether in the form of a higher toll charge or a wharf demurrage charge.

In the long run every additional day's time adds to the terminal costs and eventually this cost is passed on to the consumer of the service. If the requirements of certain shippers or certain cargoes demand that the goods remain for extended periods on the wharves, it appears as only [fol. 1997] reasonable that those enjoying this additional service should be the ones to pay for it. On the other hand, those who remove their goods promptly should not be forced, directly or indirectly, to bear the burden.

There is also some question as to whether the direct benefits from the extended free time accrue to the shipper and consignee or to the commercial trucker. If, for example, the consignee is not in a hurry for his goods, the trucking company may leave the goods at the dock the full free time in order to pick them up at its leisure or at odd hours when its equipment is free.

Practically all the terminals expressed the thought that the present ten-day free time period was too long. The general view was that free time should be reduced to five days on inbound cargo and to either five or seven days on outbound cargo. The longer period for outbound goods was felt necessary by some to assemble cargo in advance of the vessel's arrival.

A comparison of the free time periods allowed at various Pacific Coast ports is provided in the following table:

[fol. 1998]

Free Time Allowed Before Assessment of Demurrage or Storage Charges

Port	Coastwise Trade	Offshore Trade
Vancouver, B. C.	5 days	5 days
Everett, Wash.	5 days	5 days
Seattle, Wash.	5 days	5 days Inbound except Trans-Pacific 10 days Outbound except Trans-Pacific 10 days Trans-Pacific
Tacoma, Wash.	5 days	10 days
Portland, Oregon	5 days	10 days except Intercoastal Inbound 5 days Intercoastal Inbound
Richmond, Calif. Oakland, Calif. Alameda, Calif. Stockton, Calif.	10 days	10 days
San Francisco, Calif. (Assigned Piers)	5 days	10 days on all Outbound 5 days Intercoastal Inbound 7 days Inbound except Intercoastal 10 days in-transit Inbound
San Francisco, Calif. (Public Terminals)	10 days.	10 days
Long Beach, Calif. Los Angeles, Calif. (City of Los Angeles)	5 days Outbound 3 days Inbound	10 days Outbound 10 days Inbound except Intercoastal 5 days Inbound Intercoastal
Los Angeles, Calif. (Outer Harbor Dock & Wharf Company)	5 days	10 days
San Diego	5 days Outbound 3 days Inbound	10 days Outbound. 10 days Inbound except Intercoastal 5 days Inbound Intercoastal.

[fols. 1999-2004] It will be noted that on Coastwise traffic all the ports have five days or less free time except the "open terminals" on San Francisco Bay and Port of Stockton, which provide ten days. In the Offshore trade the free time is generally five days on Intercoastal inbound traffic except at the open terminals.

[fol. 2005] 12. Accessorial Services:

Accessorial services provided by the terminals and not dealt with heretofore in this report include the following:

1. Weighing.

2. Taring.

3. Labeling.

4. Strapping.

5. Stencilling.

6. Scraping and remarking.

7. Consolidation of pool car shipments.

8. Handling of rolls of boxboard.

Description of these services will be found on Page — of this report.

The revenues derived by the terminals from these services are not of large account. The actual labor involved is in many cases provided by an "independent operator" hired by the shipper. The broad question is raised as to the sufficiency of the charge for the services involved.

For example, no charge is made for weighing grain in conjunction with car loading or unloading. In such case the tariff states that the car loading includes the cost of weighing. As the act of weighing generally requires that the cargo be hand-trucked over the scales and the weights for each load recorded with proper reductions for the tare weight of the truck, it is obvious that an accessorial service is performed at a cost to the terminal and for which it should be compensated. The charge for such should rest with the party receiving the service. The same criticism may be directed toward the practice of allowing the shipper or his agent to do his own weighing on the terminal where he pays no charge for the use of the facilities. The lack of charge is [fol. 2006] occasioned by competition with San Francisco where free facilities for this service are offered.

The operation of pool cars and the charges for services rendered thereunder is open to investigation. Pool car operations consist of the assembling of small lots of freight to make up the minimum weight necessary to obtain carload rates. The goods are consigned from two or more shippers and destined for delivery to two or more consignees. As a result of the pool car service there is practically no movement of canned goods at L.C.L. rates to Intercoastal points, the shipments of the smaller shippers being pooled. The goods are forwarded with the terminal as shipper and consigned to itself or its agent at port of discharge where they are distributed by the terminal, its agent or the vessel's agent. For this pool car service the terminal levies a flat

charge of 25¢ per enclosure receipt, i.e. a flat charge against each shipment. This charge will be increased to 50¢ effective January 18, 1936.

To attract the necessary minimum tonnage the terminal advertises a ship sailing for a given port on a given date. If the terminal fails to consolidate the minimum carload tonnage, three courses are open: first, it may hold the shipment and endeavor to build it up to the minimum carload weight; second, it may endeavor to consolidate its pooled car shipments with that of another terminal, absorbing the transfer costs thus incurred; and, third, it may absorb the difference between the charge on the quantity actually assembled and the charge on the prescribed minimum carload weight.

[fol. 2007] Three questions herein arise: First, is pool car assembling a proper function of the terminals; second, if it is, is the charge for enclosure receipts reasonable; and third, if losses are incurred, is this an undue dissipation of terminal revenue, the burden of which must be borne by other services?

[fol. 2008] 13. The Free Use of Terminal Facilities:

Although the terminal companies assess charges against the vessel and the cargo for the facilities made available, there are in addition many outside parties who conduct their operations upon these same facilities paying no fee for their use. Such include the weighers, samplers, fumigators, strappers, carloaders, stevedores and other handlers of cargo.

The effect of this is shown by the following illustration: Assume a tramp vessel arrives with bulk cargo for discharge at a public terminal. The stevedoring of the vessel is put up for bid and if an independent stevedoring company, in competitive bidding with the terminal, receives the award, the wharfinger must stand by and see his own facilities used by the stevedore without compensation.

Heretofore the charges against the vessel and the cargo have been adequate to compensate the wharfinger, and little or no question was raised concerning the application of charges against these third parties; but with the terminals faced with insufficient revenues, we seriously question the granting of such free use of their facilities.

At San Francisco the Board of State Harbor Commissioners assess public weigh masters a fee of $10.00 per month plus one cent per ton on all cargo weighed.

The Los Angeles Board of Harbor Commissioners has met this problem by requiring all persons in the business of handling cargo on the municipal terminals, whether in the capacity of stevedore, handler, carloader, or vessel operator or agent, to obtain a handling permit for which an annual fee of $100.00 is charged.

[fol. 2009] 14. Truck Use of Terminals:

In 1929 the bulk of the tonnage from and to inland points was moved by rail. In 1935 the trucks moved the bulk of such tonnage. This changing trend of transportation from rail car to trucks has increased the operating cost of the terminals on the one hand and reduced their revenue from car loading and unloading operations on the other hand.

The terminals were originally constructed for the land movement of cargo by rail and the rapid shift to the use of trucks has tended to greatly congest the transit shed operations and to force the widening of these facilities, where physically possible, to properly accommodate the truck. The items of increased cost to the terminals are many. The truck enters the transit shed by means of center aisles designed originally for hand trucks or gasoline jitneys. It occupies these aisles during the loading or unloading operation, which may consume up to three hours. The increasing size of the trucks coupled with the increased use of trailers adds to the congestion. It is necessary for normal terminal and stevedoring operations that the center aisle of the building be kept open. They therefore must be constructed sufficiently wide to allow trucks traveling in opposite directions to pass with sufficient space for smaller vehicles to operate in the aisleways at the same time. However, in addition to this there must be room alongside of the aisleway for the truck to stand while it is loading or unloading. If the cargo moved by rail this space would be used for storage or handling of cargo and a revenue earned therefrom.

Movement by truck frequently causes freight to be de-
[fol. 2010] livered at the dock for outgoing steamers far in advance of the arrival of the steamer because the truckman very often does not have sufficient equipment to handle large lots in a short space of time or he may be using his equipment during the day for one type of work and haul-

ing to the dock at night, thereby obtaining maximum use of the truck to the end that he can quote a low rate for the handling of the freight. A similar feature of truck deliveries defeating the economical use of dock space is the fact that trucks hauling carload lots will deliver part of the lot one day and the balance several days later with the result that space is held open which might be usefully employed for other cargo. These practices prevent the efficient locating of freight on the dock to the end that it will be proximate to the vessel's berth, for the reason that it is not known at the time the goods arrive on the facilities which berth will be available for the steamer. The expense of moving the goods to a point available to the steamer falls on the terminal operator.

This differs from the practice followed in handling rail cargo. The movement here is more flexible in that goods can be held in the cars upon receipt until a day or so before the arrival of the vessel and, in the case of goods received from steamers, the cargo can be loaded by the terminal into cars in advance of the requirements of the consignee and held on the tracks, thus conserving dock space.

The design of terminals in the past has recognized the rail car as the principal means of moving the tonnage. The rail cars are handled on the outside of the buildings and [fol. 2011] are spotted in proximity to the outbound freight for loading, or at the spot on the dock where the freight is being assembled for outbound steamers when the car is to be unloaded. Most of the activity in connection with cars is carried on upon outside loading or unloading platforms with a minimum of congestion with stevedoring gangs loading or discharging to or from the vessel. On the other hand, a large truck and trailer discharges goods in the center aisle at a location proximate to the vessel and in the midst of stevedoring activity, and blocks not only a portion of the center aisle, but a portion of side aisles as well. As a result, the gasoline jitneys serving ships and the stevedores working in the side aisles are slowed down and the ship loads or discharges less tons per hour. This means longer occupancy of the berth and larger carrying charges per ton of freight handled. This slowing up of the vessels and the terminal operations means that more dock space must be provided upon which to handle the same number of tons which could have been

handled under previous circumstances. The movement toward wider transit sheds exemplifies this.

The bitter competition between docks and terminals has resulted in the trucks being given services costly to the terminals. The terminal operator is forced to provide a space for the unloading of cargo from trucks so that the truckman can discharge direct from his truck to the pile on the dock without requiring any hand trucking.

If trucks cannot be accommodated as they arrive at the terminal, there is a growing practice for the latter to provide "flats" or "pellets" upon which the truckman will [fol. 2012] discharge his cargo outside of the terminal buildings. The terminal operator at his own expense is forced to transfer them into the building and either leave the goods on the flats or discharge them to the floor of the dock.

On goods loaded to trucks, the same type of service is demanded and received from the terminal operator. Goods must be placed so that the truckman can pick them up directly from the pile and put them on the truck. Heavy packages must be placed at a point so that the truck can be backed up to a depressed loading platform, which allows the floor of the truck to be on the same level as that of the loading platform, and the goods loaded directly to the truck. Truckmen are even demanding that freight be placed so it can be handled directly into the truck without lifting from the floor. Time is of peculiar importance in truck operation and the trend towards this relatively new form of transportation throws added burdens on the terminals to prevent delay. When the truck arrives to load or unload it must be given immediate attention even though it may require the service of terminal employees engaged in other duties. The efficient and systematic routine that may be followed in the handling of tonnage by rail is not here possible.

All of this moving of cargo and spotting it, for the convenience of trucks and providing space for the unloading of trucks, is performed at the expense of the terminal operator without any charge being made for such service.

During the past several years the East Bay terminals have kept their facilities open twenty-four hours a day, [fol. 2013] seven days a week, for the receiving and delivering of freight moving via motor truck. Since September 3, 1935, the terminals have been open from 6 A. M. to 11:00

P. M. It is expected that the night operation will be discontinued before the close of 1935, to be resumed during the Fall rush period in 1936. The night operation is the result of an effort to facilitate the receipt of goods moved by trucks, and to permit the handling of as many trucks as is possible outside of the regular working hours of the terminals. This relieves to some degree the congestion caused on the dock by the handling of goods via motor truck during the time when vessels are loading and discharging. The night operation has resulted in an extra cost for clerking and lighting the docks, which is not borne by the trucking companies. No additional charge is made for receiving or delivering freight from or to trucks outside of the regular hours.

The trend toward the use of trucks by shippers while offering undoubted advantages to the latter, has thrown additional burdens upon the terminals for which they generally feel they should be compensated. To sum up, the operation of trucks on the terminals has been responsible for:

1. Congestion.
2. Rehandling of truck cargo to make it available to the vessel or to concentrate it for pick-up by the truck.
3. Larger sheds with wider center aisles—with increase in terminal fixed charges.
4. Outside turning areas required.
5. Twenty-four hour service to accept night deliveries.
6. Interference with terminal operations.
7. Loss and damage to cargo as a result of the operation of trucks in narrow quarters between piles of merchandise.
8. Theft of cargo by truck drivers.
9. Provision of clerks on short notice to check truck deliveries.

[fol. 2014] 10. Loss of revenue from car loading and unloading.

11. Interference with stevedoring and increase in time required to load or discharge vessels.

At the present time Los Angeles is the only port assessing a truck charge. At this harbor all tonnage moving to or from the municipal terminals by motor truck, or by any other vehicle other than railroad cars, is required to pay

a charge known as a "truck tonnage charge" for the use of facilities and for traffic control provided by the board of municipal terminals. The rate on all cargo, except lumber, is 5¢ per ton of 2,000 pounds or 40 cubic feet measurement, at the option of the traffic manager. This charge is collected by the wharf operator in the same manner as wharfage or handling charges.

In the early part of 1935 the terminals at Seattle established a 20¢ per ton trucking charge when they did not perform the loading or unloading on freight moved by motor truck from or to points outside of the City of Seattle. In June 1935 the charge was withdrawn primarily because competitive ports would not establish the same charge.

In comparing rail vs. truck tonnage, it may be pointed out that the car loading and unloading charge on rail cargo is a combined charge for services rendered and for facilities used. The latter refers to the investment in truck facilities, substructure and equipment. Question is thus raised as to the need for a parallel charge against the truck or truck-borne tonnage to compensate for the additional facilities necessary to handle it and the extra operating expenses it forces on the terminal.

[fol. 2015] 15. *Payment Periods:*

The terminals make a practice on shipments received with freight charges collect of advancing such charges to the rail or water carrier. They also grant credit up to thirty days or longer for the payment of the various charges they make against the vessel and the cargo. Extension of credit over long periods of time places a financial burden upon the wharfinger, at the same time unduly favoring certain users of the terminal services. We find that the length of periods over which such credit is extended is not covered by tariff rules and believe that proper provision regarding these items should be provided.

[fol. 2016] 16. *Tariff Absorptions and Allowances:*

Terminals in the San Francisco Bay area provide various absorptions for the purpose of equalizing their respective competitive positions. For example, the switching charge from certain East Bay switching zones to the Oakland and Alameda terminals varies from 34¢ to 45¢ per ton depending upon the origin and destination zones. Where the

charge is 45¢ the terminal makes an absorption of the 11¢ differential.

The absorptions range from such equalization of switching charges within the same or adjacent ports to equalizations between widely separated points on the Bay or even between the San Francisco and Los Angeles harbors.

These latter absorptions are based upon the principle that tonnage begets tonnage. A certain minimum volume of cargo will attract steamship services which will in turn attract more cargo as the service is improved and the shipper takes advantage of certain savings in routing his tonnage through one terminal.

This principle is correct, however, only insofar as one terminal is concerned. It does not apply to a group, for what one gains the other loses. The loser in retaliation offers the same absorptions. The final result is that the tonnage is either divided among the ports in the original proportions, with the terminals absorbing many transportation charges foreign to the wharfinger business, or else certain terminals acquire the bulk of the cargo and the steamship services and the remainder lose both.

While certain of these absorptions may be justifiable, serious question arises concerning the economic justifica- [fol. 2017] tion of others. The general criticisms against absorptions may be summarized as follows:

(1) Results not in an increased tonnage for the Bay area as a whole, but only in the shifting or diversion of tonnage between ports or between terminals within a port.

(2) Results in wharfingers providing or assuming transportation burdens foreign to the terminal business.

(3) Results in cargo being forced into artificial channels and wasteful movements, such as round trip barge or barge and rail movements across the San Francisco Bay before departure in order that the cargo may move through a given terminal.

(4) Shippers routing ocean tonnage via the East Bay terminals may at the same time have up to 15% of the cargo transferred at the terminal's expense to San Francisco for local delivery to consignees. San Francisco shippers enjoy no such privilege.

(5) Results in a dissipation of terminal revenues and a discrimination against the cargo as a whole which must bear the cost.

(6) Removes any natural advantage any one port may have for its local industries.

Additional specific criticisms are given in the detailed analysis to follow.

[fol. 2018] In the following analysis of absorptions, reference is made only to the private terminals on the San Francisco Bay. The Board of State Harbor Commissioners, while prescribing rates and regulations over the San Francisco waterfront, does not itself handle cargo and hence makes no absorptions. Certain steamship lines renting State piers, however, do absorb the differential in the cost to move Oakland and Alameda tonnage to their own assigned piers in San Francisco as compared with the rail charge to the East Bay terminals. This absorption is limited to certain Coastwise and Intercoastal lines.

The Port of Oakland, in Tariff No. 1, provides for a variety of absorptions limited only, as stated in the tariff, to the "* * * discretion of the Port Manager." It is assumed that the port makes substantially the same absorptions as the private terminals with which it competes.

The following analysis of absorptions is made to facilitate an examination of the items to the end that those not economically justified can be cancelled. Every item named in the tariffs of the Respondents appears among the twenty-four types of absorptions listed below. Where the items were found to be similar, they were grouped together for presentation with proper tariff reference. Effort has been made to illustrate the absorptions with typical average cargo movements. Extreme cases were avoided. The emergency rail charges were ignored as they expired June 30, 1936. Reference to dockage charges was likewise omitted as the East Bay terminals do not assess dockage except on the Coastwise and Inland Waterway trades and even here it is an almost indeterminate quantity varied and [fol. 2019] limited by many tariff exceptions and operating practices.

* * * * * * *

[fol. 2020] *No. 19. Absorption of transfer charges on part lot transfer of canned goods and dried fruit:*

Tariff References:

San Francisco Terminals, Car Unloading Tariff, C. R. C. No. 1, Item (not shown). Original, Page 19; State Terminal—C. R. C. No. 1, Item No. 1200-A.

[fol. 2021] *Explanation:*

When the terminal company provides the car unloading on C. L. shipments the cost of transfer or switching of any part of lot to a second pier will be absorbed by the terminal company. The State Terminal's absorption is limited to carload shipments initially unloaded at the vessel's berth and at which point the car unloading revenue amounts to not less than $8.00 per car. This terminal further limits its absorption to one switching movement and to cars originating outside the San Francisco switching limits.

Illustration:

Assume twenty-ton shipment of canned goods, of which ten tons is drayed to a second pier:

Terminal Revenues: (Twenty tons)	
Car unloading at 40¢ per ton	$8.00
Absorption Expense: (Ten tons)	
Drayage at 50¢ per ton	$5.00
Gross Revenue After Absorption	$3.00

$$\text{Absorption} = \frac{\$5.00}{\$8.00} = 62.5\% \text{ of the gross revenue.}$$

Criticisms:

(1) State Terminal sets no limit upon absorption when freight is transferred by other than switching.

(2) San Francisco Terminals sets no limit upon absorption regardless of method of transfer.

[fol. 2022] *No. 20. Absorption of railroad differentials on carload shipments of canned goods, dried fruit and apricot kernels moving from points within the Oakland and Richmond switching limits to State Terminal, San Francisco, for consolidation with other parcels of freight:*

Tariff Reference:

State Terminal—C. R. C. No. 1, Item No. 1204.

Explanation:

The State Terminal will absorb the difference (but not to exceed 36¢ per 2,000 pounds) in the transportation cost between (1) the switching charges from point of origin to wharves at Oakland, Alameda or Richmond, whichever is the lesser, and (2) the railroad freight charges from same points of origin to the State Terminal.

Illustration:

Assume shipment of canned goods destined to an Intercoastal port from point within Richmond switching limits:

Terminal Revenue:	
Service charge per ton	$ .40
Car unloading charge per ton	.40
	$ .80
Absorption Expense:	
Rail differential per ton	$ .36
Gross Revenue After Absorption	$ .44

$$\text{Absorption} = \frac{\$\ .36}{\$\ .80} = 45\% \text{ of gross revenue.}$$

Criticisms:

(1) Absorption is for purpose of meeting East [fol. 2023] Bay competition, but is not restricted to competitive traffic.

(2) Constitutes a transportation service over and beyond the wharfinger's responsibilities for which the shipper does not pay.

No. 21. Absorption of a portion of the State Belt Railroad switching charge:

Tariff Reference:

State Terminal—C. R. C. No. 1, Item No. 1205.

Explanation:

On Interstate carload freight originating at or destined to points outside of the San Francisco switching limits and switched from or to the State Terminal, the terminal will absorb that portion of the switching charge which is not absorbed by the line haul carriers. This absorption, in practice, is limited to a maximum of 50¢ per car. The line haul carrier will absorb the State Belt Railroad switching charge providing its revenue after absorption is not less than $11.50. On a carload minimum charge of $15.00 the carrier can absorb only $3.50. Balance of 50¢ is absorbed by the terminal.

Criticisms:

(1) The item is to meet East Bay competition, but the absorption is made unnecessarily on non-competitive traffic which could not be routed via the East Bay [fol. 2024] on account of lack of steamship services (Example: Trans-Pacific outbound traffic).

(2) Such absorption should be further limited to instances when water carriers do not make the absorption here covered.

No. 22. Absorption of service charges on trans-shipped Coastwise traffic:

Tariff Reference:

State Terminal—C. R. C. No. 1, Item No. 1250-A.

Explanation:

The terminal will absorb the service charges on Coastwise cargo trans-shipped by water from or to other public terminals provided the service charges have been assessed by such other terminals and the cost of trans-shipping is borne by the ocean carrier.

Criticism:

(1) The application of the service charge is removed and replaced by a 25¢ per ton checking charge. See Tariff Item No. 100-A. Question is raised as to the application of the absorption in trades other than Coastwise.

[fol. 2025] *No. 23. Absorption of "handling in" and "handling out" charges upon wharf demurrage cargo:*

Tariff Reference:

State Terminal—C. R. C. No. 1, Items Nos. 1210, 1215, 1220, 1225, 1230, 1235, and 1240-A.

Explanation:

The State Terminal assesses certain handling charges on cargo held under wharf demurrage.

Item No. 120(E) reads:

"Handling in" (including delivery to berth of vessel alongside) 35¢ per ton.

Item No. 120(F) reads:

"Handling out" (including delivery to truck or car platform) 50¢ per ton.

Item No. 125 defines the handling service as follows:

"The rates for labor of handling cover transit of cargo from shed door to terminal platform into shed, and delivery from shed to shed door or terminal platform. They do not cover unloading from or loading into car or truck."

This item further states that labor handling rates on all cargo delivered for a specific vessel and held beyond the free time period will be as shown in Item No. 130; but such item quotes rates on specific commodities only as follows:

Item No. 130:

Canned foods, dried fruits, beans, kindred products—35¢ per ton. Lumber—90¢ per M. F. B. M.

[fol. 2026] There is apparently a great deal of ambiguity and overlapping in the above definitions of terms and the quotation of rates making the interpretation of the tariff confusing if not impossible.

The absorption items referred to in the above tariff references provide for absorption of the "handling in" or "handling out" charges under the following circumstances and conditions:

Item No. 1210:

"Handling in" charge absorbed if consigned to vessel sailing within thirty days from date of arrival of merchandise and providing car unloading revenue is not less than $8.00 per car.

Item No. 1215:

"Handling out" charge absorbed when merchandise ordered delivered to vessels in berth alongside this terminal.

Item No. 1220:

"Handling out" charge absorbed when merchandise ordered loaded into railroad cars and loading is performed by the terminal. (Note: No minimum car loading revenue prescribed.)

Items Nos. 1225 and 1230:

"Handling in" charges will be absorbed on all merchandise delivered by vessels in Alaskan, Hawaiian and/or Coastwise trade, and also upon sugar regardless of trade, when delivery is made to upper deck (terminal's option) and cost of piling is assumed by [fol. 2027] and/or performed by delivery vessels.

Item No. 1235:

Waives up to 80% of the "handling out" charge on canned salmon discharged at the State Terminal and ordered out for delivery via trucks or drays to other San Francisco piers providing that through its own inability the terminal does not furnish the labor.

Item No. 1240-A:

On Alaska salmon and/or Hawaiian pineapple similarly delivered to trucks or drays for delivery to other San Francisco piers the terminal will absorb 50% of the "handling out" charge (Item No. 120(F)) provided that the merchandise had been delivered to the terminal direct from the vessel and assessed service charges.

Criticisms:

(1) Definitions of "handling in" and "handling out" services given in Item No. 120 are vague and incomplete.

(2) No clear distinction between the "handling in" and "handling out" services named in Item No. 120 on the one hand, and the "labor handling" services defined in Item No. 125 on the other; yet different rates are quoted for each.

(3) Question is raised as to the purpose or necessity of restricting Item No. 1210 to merchandise consigned to a specific vessel. Cargo on wharf demurrage is seldom consigned to specific vessels.

[fols. 2028-2032] (4) If a minimum car loading revenue is required in Item No. 1210 before the absorption applies, why is not a similar minimum required under Item No. 1220?

(5) Items Nos. 1225 and 1230 refer to delivery at terminal's option to upper deck; but this deck is owned and operated by the State and is not under the control of the State Terminal. Clarification of the terminal's authority over upper deck is desirable.

* * * * * * *

[fol. 2033] 17. Differentials:

Certain terminals have expressed the need for a differential in their charges, particularly charges against the vessel, to compensate for their remote location, lack of steamship services and other competitive disadvantages. Other terminals more favorably situated expressed the view that all rates should be on a parity, or if differentials were granted, they should be limited to charges against the vessel.

The subject of differentitials has always been a troublesome one, whether it appears in the terminal business, the transportation field or elsewhere. No attempt is made at this time to justify one position or the other.

[fol. 2034] 18. Leases and Rentals:

Portions of terminal properties or lands adjacent thereto are found leased by the terminals to industrial concerns

which have need for wharfinger services. The broad question was raised as to whether the rental charge made such concerns was reasonable as of itself or whether it might constitute a form of rate reduction. Particular question is raised concerning leases of property which grants the lessee use of dock facilities without charge.

At the time the Parr-Richmond Terminal Company acquired the San Pablo Dock, it likewise took title to adjoining parcels of land, portions of which were under lease to the Philippine Refining Corporation of New York and the Pacific Molasses Company, Ltd. These leases provided that the lessees should have certain use of the dock facilities without charge. Serious question now arises as to whether or not this constitutes a violation of the published tariffs of the Parr-Richmond Terminal Company.

[fol. 2035] 19. Shipper Control of Terminals:

Question has been raised by many parties contacted in this investigation to the effect that terminals *controlled by* large shipper interests as Cal. Pack. Corp. have been able to exert undue pressure upon shippers to route their cargo via such terminals.

This pressure is allegedly applied in *reciprocal business* relationships between the terminal's parent company on the one hand and the shippers on the other, who may thereby be threatened with loss of sales to the parent if their tonnage fails to move over the subsidiary terminal.

This pressure by shipper controlled terminals may further be exerted against steamship companies by requiring them to divert freight tonnage through the controlled terminal or to offer services to that terminal not offered other terminals by promise of increased tonnage or threat of withdrawal of existing tonnage.

In our investigation, however, we have not been in a position to prove or disprove such allegations nor to gauge their influence. It is apparent, however, that such pressure on the routing of cargo might cause it to follow a more costly route to tidewater than would otherwise be the case. The terminal benefiting from such routing would be forced to absorb this increased cost in the form of absorptions. These absorptions are considered elsewhere in this report.

[fol. 2036] 20. Tariffs, Suggested Improvements in the Form of:

In checking the various wharfinger tariffs on file with this Commission, we find a lack of conformity with the standard rules of tariff publication generally applicable to public utilities.

Summarized briefly, the majority of tariffs lack the following, to wit:

1. Table of Contents.

2. Explanation of Abbreviations.

3. Insufficient definition of certain terms used.

4. Failure to state exceptions which are made in the application of certain rates.

5. Failure to define terms used.

6. Unit upon which rates apply not shown on each page.

7. Use of ambiguous language in certain rules and regulations.

8. Failure to state package requirements in connection with certain commodities.

9. General rules and regulations not published in appropriate section or part of the tariff.

10. Failure to provide cross-references to rates, rules or regulations to be used in conjunction with one another.

11. Failure to state the application of varying rates and minimum weights.

We suggest that the above deviations from accepted standard practices in tariff construction be eliminated in the future.

[fol. 2037] 21. Operation as Public Utility Without Tariffs:

This investigation embraces the determination as to whether or not certain concerns not now subject to the Commission's jurisdiction are engaged in business as public wharfingers, and/or carloaders, and/or warehousemen, and should therefore be required to file tariffs with this Commission. The companies so concerned are as follows:

Interstate Terminal.
Albers Brothers Milling Company.

J. M. Atthowe doing business as Berkeley Transportation Co.

General Steamship Corporation, Ltd.

The Paraffine Companies, Inc.

G. B. Lauritzen, H. P. Lauritzen and N. P. Bush, co-partners, doing business as Richmond Navigation & Improvement Company.

Sudden & Christenson.

Williams Dimond & Co., Ltd.

Islais Creek Grain Terminal Corporation.

The Pacific Oriental Terminal Company, Ltd., and Rhodes-Jamieson, Ltd., have tariffs on file covering car loading and unloading. The question as to whether they also engage in public wharfinger operations is to be determined.

[fol. 2038] 22. Railroad Operated Terminals:

Little or no reference has been made in this report to the three railroad terminals maintained on the San Francisco Bay by Southern Pacific Company, The Western Pacific Railroad Company and The Atchison, Topeka and Santa Fe Railway Company, respectively. It is sufficient to say that the rail carriers are not the factors here that they are at many Atlantic ports where terminal charges are waived when the carrier gets the line haul. The facilities here are far from modern, little tonnage moves over them and the carriers furthermore have in the past evinced a willingness to assess the "going charges."

[fol. 2039] Part II

Supporting Data

[fol. 2040] 1. Definition or Explanation of Terms Used.

1. *Classification of the Steamship Trades:*

(a) *Coastwise:*

Service along the Pacific Coast of the United States between the Mexican and Canadian borders, including such service when via British Columbia ports.

(b) *Inland Waterway:*

Service between San Francisco, Oakland, Alameda or Richmond, California, and ports or points located on San Francisco Bay and inland waterways tributary thereto, but not via the Pacific Ocean.

(c) *Intercoastal:*

Service between San Francisco Bay ports and ports in the United States on the Gulf of Mexico or Atlantic Ocean.

(d) *Hawaiian:*

Service between San Francisco Bay ports and ports in the Hawaiian Islands.

(e) *Alaskan:*

Service between San Francisco Bay ports and ports in Alaska.

(f) *Trans-Pacific:*

Service between San Francisco Bay ports and points west of the 170th Meridian of West Longitude, (principally to Asia, Philippines, Australasia and East Coast of Africa.)

(g) *Foreign:*

Service to points other than heretofore described, (principally to Europe, Central and South America and Caribbean Sea ports.)

[fol. 2041] (h) *Offshore:*

Embraces all the above trades with the exception of "Coastwise" and "Inland Waterway."

2. *Definition and/or Explanation of Wharfinger Terms and Charges:*

(a) *Service Charges:*

Except as otherwise provided, the Service Charge covers any one or more of the services described below, and shall be assessed against all vessels:

1. Arrange berth for vessel.

2. Arrange for cargo space on dock.

3. Check cargo to or from vessel.

4. Receive outbound cargo from shippers.

5. Deliver inbound cargo to consignees.

6. Make up dock manifests and loading lists or tags covering cargo loaded aboard vessels.

7. Prepare over, short and damage reports.

8. Order cars.

9. Give information to shippers and consignees regarding cargo, sailing and arrival dates of vessels, and other incidental data.

10. Lighting wharf.

(Service Charge does not include any labor of handling cargo.)

(b) *Dockage Charges:*

The charge assessed against a vessel for berthing at a wharf, pier of seawall structure, or coming within a slip, channel, basin or canal.

(c) *Toll Charges:*

The charge for cargo conveyed on, over or through any wharf, pier or seawall structure, both inward and outward, or loaded or discharged while the vessel is moored in any slip, basin, channel or canal.

(d) *Wharf Demurrage Charges:*

The charge assessed against merchandise which remains on the terminal beyond the free time period.

(e) *Pool Car Assembling Charges:*

The charge for assembling small lots of freight from two or more shippers to make up the minimum weight for a carload watershipment, and forwarding it to destination for delivery to two or more consignees.

(f) *Charge for Handling Rolls of Boxboard in Open Cars:*

The charge for moving cars on dock and covering contents with tarpaulins.

[fol. 2042] (g) *Charge for Weighing:*

1. Charge for weighing merchandise by individual package or by hand-truck loads.

2. Charge for weighing carload lots over railroad track scales and issuance of Weighmaster's certificate.

(h) *Charge for Taring:*

The charge for removing goods from containers, weighing containers and replacing goods in containers.

(i) *Charge for Case Labeling:*

The charge for attaching paper labels to the outside of cases.

(j) *Charge for Case Strapping:*

The charge for placing wire strapping around cases.

3. *Cargo N. O. S.:*

Cargo not otherwise specified or indicated by name in the terminal tariffs. In the application of service charges, toll and wharf demurrage relatively few specific commodity rates are quoted. The "Cargo N. O. S." or "Merchandise N. O. S." items therefore embrace a substantial part of the total tonnage moving.

4. *Gross Registered Tonnage:*

A measure of the internal capacity of the entire ship, in some measurement rules including superstructures, in terms of approximate tons based on space. For this purpose 100 cu. ft. of closed-in space are designated as one ton.

5. *Net Registered Tonnage:*

A figure, measured in the same units as the gross tonnage, obtained by deducting from the gross tonnage allowances made for the ship's machinery, navigation and propelling space and quarters for officers and crew. The net tonnage is thus intended to be a measure of the passenger and cargo-

carrying or earning capacity of the ship. It is usually [fol. 2043] about 63 per cent of the gross tonnage.

6. *Under Deck Tonnage:*

Under deck tonnage comprises the exact measurement of the total space below the uppermost full length deck, (only applicable on River Steamers).

[fol. 2044] 2. Encinal Terminals:

Respondent, Encinal Terminals, is a corporation organized in October, 1924, and existing under and by virtue of the laws of the State of California. It is engaged, among other things, in the warehouse and wharfinger business as a public utility as that term is defined in Sections 2 and 2½ of the Public Utilities Act of the State of California.

Said Respondent was organized for the purpose of operating docks and wharves for the handling of water-borne commerce of the California Packing Corporation, The Alaska Packers Association and their subsidiary corporations. The object was to eliminate the expense theretofore incurred in handling such commerce over the various piers in San Francisco and to provide economies in the storage of goods at tidewater facilities. These two factors coupled with the ownership of suitable lands in Alameda by the Alaska Packers Association were the determining reasons for the establishment of present facilities by Respondent. Prior to the completion of the first two units, the original plan of handling only the tonnage of the parent companies and their subsidiaries was altered. Instead the facilities, when opened in the Fall of 1925, were made available to the public and have been operated since that date as a public wharfinger business. In May, 1935, Respondent began warehouse operations limiting the service to certain commodities only.

Property used in the warehouse and wharfinger operations is located in the City of Alameda, Alameda County, [fol. 2045] California, at the Foot of Jay Street with the wharves and sheds constructed upon a body of water known as Alaska Basin which is dredged at right angles to the San Antonio Estuary (also known as Oakland Estuary).

Investment in buildings, construction and equipment as of December 31, 1934, on undepreciated and depreciated are as follows:

Item	Undepreciated value as of 12/31/34	Depreciated value as of 12/31/34
Buildings and Construction	$995,421.84	$549,094.92
Equipment	37,370.88	14,361.54
	$1,032,792.72	$563,436.46

The purchase of the original buildings and equipment by Respondent from the Alaska Packers Association in 1929 was authorized by this Commission in Decision No. 21653, decided October 4, 1929, in Application No. 15931. Land used in wharfinger operations is leased from the Alaska Packers Association.

Respondent is authorized to issue 25,000 shares of stock of a par value of $100.00 per share, of which 8,815 shares are issued and outstanding, and all of which shares are owned and held by the Pacific Industries, Ltd.

Said Pacific Industries, Ltd., is a corporation organized under the laws of the State of California in 1928 by the California Packing Corporation and Alaska Packers Association for the purpose of owning and holding the capital stock of the Respondent, which it has owned since the date of its organization. Capital stock of said Pacific Industries, [fol. 2046] Ltd., is owned in its entirety by the Alaska Packers Association.

Said Alaska Packers Association is a corporation organized under the laws of the State of California, and is engaged exclusively in the packing of salmon, with canning plants located in Alaska and State of Washington. Approximately 84% of the outstanding capital stock of said Alaska Packers Association is owned by the California Packing Corporation, which operates the business of said Alaska Packers Association as a subsidiary corporation.

Said California Packing Corporation is a corporation organized in 1916 under and by virtue of the laws of the State of New York, with its principal office located in the City of San Francisco, State of California. It is engaged, either directly or through its subsidiary corporations, in the business of packing and distributing many kinds of food

products consisting principally of dried fruits, canned fruits and vegetables, canned fish, canned Hawaiian pineapple and coffee, and is one of the largest of its kind in the world. Plants are located in the States of California, Oregon, Washington, Idaho, Utah, Wisconsin, Illinois, Minnesota, Florida, New York and in Alaska, the Hawaiian and Philippine Islands.

Respondent has no outstanding bonds or notes.

Revenues and expenses from wharfinger operations, January 1, 1930 to October 31, 1935 inclusive are as follows:

[fol. 2047]

Year	Operating Revenue	Operating Expense	Net Operating Revenue	Net Operating Loss
1930	$471,458 41	$462,238 38	$9,220 03	
1931	409,933 25	414,588 24		$4,654 99
1932	392,566 33	381,362 39	11,203 94	
1933	429,136 91	435,752 74		6,615 83
1934	477,171 82	541,947 33		64,775 51
1935 (10 mos.)	404,447 22	431,073 07		26,623 85
	$2,584,713 94	$2,666,960 15	$20,423 97	$102,670 18
				20,423 97
Net operating loss 1/1/30 to 10/31/35				$82,246 21

Rental and lease arrangements in effect include only that of land used in the wharfinger operations prior to May, 1935. In 1934 the Alaska Packers Association started construction of a terminal unit on the west side of Alaska Basin to provide additional space for cargo and ships handled by Respondent. While the said terminal unit was completed in May, 1935 and put in operation, the purchase thereof and adjustment of existing land lease between Respondent and Alaska Packers Association has not as yet been effected.

The existing lease is dated July 1, 1929 between the Alaska Packers Association as lessor and Encinal Terminals as lessee, the term to begin from the date thereof to and including February 4, 1945. Among other things, the lease provides that all taxes and assessments upon the land shall be borne by lessor and upon the improvements by lessee. Rentals for land involved in the lease and estimated to be 33 acres (does not include land used in improvement referred to above) are as follows:

$11,000.00 per month from date of lease to Jan. 5, 1934.
13,200.00 per month on Jan. 5, 1934 to Jan. 5, 1935.

11,000.00 per month on Jan. 5, 1935 to Jan. 5, 1939.
15,400.00 per month on Jan. 5, 1939 to Jan. 5, 1945.

Generally described, Respondent's property consists of [fol. 2048] three wharves and sheds, together with spur tracks, storage yard, water works, pipe lines, roadways, equipment and appurtenances necessary to carry on Respondent's business. Rail switching service is performed by the Alameda Belt Line which interchanges with The Atchison, Topeka & Santa Fe, Southern Pacific and Western Pacific. Respondent also acts as a freight agent for The Atchison, Topeka & Santa Fe and Western Pacific in operating a less-than-carload freight depot on the premises for the two carriers.

Respondent performs the following wharfinger services as defined in its tariff, to wit: (see Definition of Terms, page 132)

(1) Service and Charges for the Account of the Vessel:

(a) Service Charges:
(b) Dockage Charges:
(c) Miscellaneous Charges:

1. Charge for water supplied to vessels.
2. Charge for electric current supplied to vessels.
3. Taking, releasing and shifting lines between dock and the vessel.

(2) Service and Charges for Account of the Cargo:

(a) Toll Charges:
(b) Wharf Demurrage Charges:
(c) Pool Car Assembling Charges:
(d) Charge for Handling Rolls of Boxboard in Open Cars:
(e) Charge for Weighing:
(f) Charge for Taring:
(g) Charge for Case Labeling:
(h) Charge for Case Strapping:
(i) Stencilling Charge:

(j) Scraping and Remarking Charge:

(k) Charge for Loading or Unloading of Cars or Trucks:

Following are the tariffs filed with this Commission covering wharfinger and warehouse services by the Respondent:

Encinal Terminals Tariff No. 1, C. R. C. No. 1 (Original Tariff effective June 1, 1929)

[fol. 2049] Naming Rates, Charges, Rules and Regulations for Service, Dockage, Toll, Wharf Demurrage, Loading and Unloading of Cars or Trucks, Weighing, and Miscellaneous Charges Assessed against the carrier and shipper or consignee.

Encinal Terminals Tariff No. 2, C. R. C. No. 2 (Original Tariff effective June 1, 1929).

Naming Rules and Regulations for Absorption of Charges.

Encinal Terminals Tariff No. 3, C. R. C. No. 3 (Original Tariff effective January 31, 1933)

Naming Rates and Charges for Storage and Handling of Copra Meal, in bags.

Encinal Terminals Merchandise Warehouse Tariff No. 1, C. R. C. No. 1 (Original Tariff effective May 4, 1935).

Naming Rates, Charges, Rules and Regulations for Storage and Incidental Handling of Specific Commodities.

Steamship services available at so-called water "terminal" rates from and to Encinal Terminals are as follows:

Intercoastal-Atlantic: (via Panama Canal)

Served by all carriers in the trade, both Eastbound and Westbound. Freight steamers usually call direct to load or discharge but exercise their option to barge cargo between the Terminal and their San Francisco piers when operating conditions or volume of freight does not warrant the shifting of steamer. Passenger steamers operated by three of the carriers in the trade do not shift from their San Francisco piers and all cargo is barged from or to the San

Francisco piers. All carriers absorb cost of barging cargo when performed.

Intercoastal-Gulf: (via Panama Canal)

The service by the lines in this trade is identical with that shown above for Intercoastal-Atlantic.

[fol. 2050] *Coastwise:* (Between California, Oregon, Washington, & British Columbia Ports).

Served by several of the carriers in the trade either by calling direct or barging the cargo at their expense between the Terminal and their San Francisco piers. Other carriers in the trade restrict service to direct calls only for a minimum ranging from 75 tons to 500 tons per vessel.

European: (Service between Pacific Coast & Europe via Panama Canal)

Served by all carriers in the Eastbound trade by direct call only for a minimum of approximately 100 tons per vessel. Steamship conference ruling prohibits barging at expense of carrier when cargo available does not approximate 100 tons per vessel. Westbound European cargo is delivered by direct call of the vessel or barged at the expense of the carrier as inducements offer. Such cargo for Alameda discharge is accepted at the carrier's option.

Mexican: (Service between Alameda and West Coast of Mexico)

The two carriers in this trade serve Encinal Terminals through the medium of barge service as the freight offerings are small, absorbing the cost thereof between the San Francisco piers and the Terminal.

Transpacific:

Served irregularly by direct call of vessels as inducements offer.

Hawaiian:

The carrier in this trade maintains a weekly service be-
[fol. 2051] tween the principal Hawaiian ports and the

Terminal and alternate weeks between the smaller Hawaiian ports. Steamers usually call direct to load or discharge but when it is necessary to barge cargo from or to San Francisco piers and the Terminal for operating convenience, such barging is absorbed by the carrier.

Other Services:

Served irregularly by direct call of vessels as inducements offer.

[fol. 2052] 3. Howard Terminal:

Respondent, Howard Terminal, is a corporation organized and existing under and by virtue of the laws of the State of California. It is engaged, among other things, in the warehouse and wharfinger business as a public utility as that term is defined in Section 2 and 2½ of the Public Utilities Act of California. As a public wharfinger, the Respondent has been continuously engaged for a period of thirty-five years.

Property used in the warehouse and wharfinger operations is located in the City of Oakland, Alameda County, California, lying southerly of First Street between Market and Linden Streets and extending to the Oakland Estuary on San Francisco Bay.

Investment in land devoted to wharfinger purposes consists of 7.2799 acres, with an appraised value of $43,560.00 per acre, or $317,112.44. The book value of the land (original cost) was $85,597.79. The undepreciated and depreciated value as of December 31, 1934, on investments in buildings, construction and equipment are as follows:

Item	Undepreciated Value as of 12-31-34	Depreciated Value as of 12-31-34
Buildings and Construction	$410,147.49	$231,181.23
Equipment	52,488.64	13,731.42
	$462,635.83	$244,912.65

The capital stock of Howard Terminal, authorized and issued, consists of 2,500 shares of common stock of the par [fol. 2053] value of $100.00 per share, the ownership of the stock being as follows:

Balfour Guthrie Investment Co. (See note)	1,375 shares
Helen L. Howard and Charles P. Howard, Trustees	1,125 shares
	2,500 shares

Note: This company is affiliated with Balfour Guthrie & Co., Ltd., the latter being a world-wide shipping concern with many ramifications, including that of foreign selling agent for the California Packing Corporation and Alaska Packers Association. The two last mentioned companies are refered to under Encinal Terminals data, pages Nos. 135-137.

Respondent has no bonds authorized, issued or outstanding, but does have outstanding in notes $83,000.00 with interest at five and one-half per cent per annum.

Revenues and expenses from public utility operations by Respondent, January 1, 1930, to October 31, 1935, inclusive, are as follows:

Wharfinger Services

Year	Operating Revenue	Operating Expense	Net Operating Revenue	Net Operating Loss
1930	$261,369.52	$234,058.06	$27,311.46	
1931	271,150.97	238,166.00	32,984.97	
1932	221,361.48	216,559.56	4,801.92	
1933	244,355.38	224,877.09	19,478.29	
1934	231,021.76	260,542.56		$29,520.80
1935 (10 mos.)	215,896.53	224,710.52		8,813.99
	$1,445,155.64	$1,398,913.79	$84,576.64	$38,334.79
			38,334.79	
			$46,241.85	Net Operating Income, 1-1-30 to 10-31-35

[fol. 2054] The following revenues and expenses from warehouse operations are for the period January 1, 1930, to December 31, 1934:

Year	Operating Revenue	Operating Expense	Net Operating Revenue	Net Operating Loss
1930	$15,821.84	$21,133.92		$5,312.08
1931	12,460.94	21,284.02		8,823.08
1932	12,648.11	15,328.59		2,680.48
1933	11,518.37	14,982.40		3,464.03
1934	10,108.54	13,239.09		3,130.55
	$62,557.80	$85,968.02		
Net operating loss 1/1/30 to 12/31/34				$23,410.22

Rents and leases in effect at Respondent's wharfinger facilities are:

Lease of approximately 10,000 square feet of space within the walls of Terminal Building Unit No. 6, formerly devoted to public utility wharfinger service, to the Kieckhefer Container Company, which engages in the manufacture of fibreboard containers, on a basis of three cents (3c) per square foot per month for a period of three (3) years. This Commission approved the lease in Decision No. 28116, decided July 12, 1935, in Application No. 19974.

In the conduct of Respondent's wharfinger business, it leases from the City of Oakland certain properties. The first lease, known as Lease No. 1, involves the outer ends of Pier Nos. 1 and 2 which are located upon tidelands under the jurisdiction of the City of Oakland. Among other things, [fol. 2055] such lease provides substantially the following terms and condidtions, to wit:

> Rental: That the Respondent, as Lessee, shall pay to the City of Oakland, as Lessor, five per cent (5%) of the gross revenue derived from Toll and Dockage charges for overhead expense, the remaining ninety-five per cent (95%) of the gross to be split eighty per cent (80%) going to the Lessee and twenty per cent (20%) going to the Lessor.
>
> All expenditures for maintenance, dredging or improvements are deducted from the balance of ninety five percent (95%) of gross revenue referred to above before the division of revenue is made between the Lessor and Lessee. On monies advanced by the Lessee for such purposes, interest at five per cent (5%) per annum is allowed until reimbursed from the gross revenue obtained as stated above.
>
> Term: The term of the lease shall be thirty five (35) years from and after November 5, 1914. Title to all buildings and improvements upon the demised premises shall revert to the City of Oakland when lease expires.

The second lease between the City of Oakland, as Lessor, and the Respondent, as Lessee, known as Lease No. 2, involves the Quay Wall Berth (also known as Howard Terminal Berth No. 3) and was executed between the parties on December 1, 1935, for a term of one year. Among other things, such lease provides substantially the following terms and conditions, to wit:

[fol. 2056] Rental: The lessee shall pay as an annual rental the sum of $3,960.00 plus the gross revenue obtained from Toll and Dockage Charges on cargo handled through the facility, with a guarantee that such Toll and Dockage charges shall not be less than $5,000.00 per annum. In addition, the Lessor retains gross revenue derived from certain short period Wharf Demurrage charges on cargo held in the facility. All expenditures for maintenance, dredging or improvements shall be at the sole cost and expense of the Lessor.

Both of aforementioned leases with the City of Oakland provide that the Lessee shall assess and collect Toll and Dockage charges in accordance with the published tariff of the City of Oakland as Lessor. Inasmuch as the City of Oakland controls by water the ingress to and egress from all the wharfinger facilities operated by the Respondent, all gross revenue derived from Toll and Dockage charges on cargo handled from or to vessels must be surrendered either in part or in their entirely to the City of Oakland in accordance with the leases as outlined above.

For many years prior to December 1, 1935, the aforementioned second lease involving the use of the Quay Wall Berth by the Respondent provided substantially the following terms and conditions, to wit:

Rental: The Lessee to pay the sum of $1,800.00 as yearly rental plus ten per cent (10%) of the gross revenue derived from Toll and Dockage charges on cargo handled through the facility for overhead expense to the Lessor, the remaining ninety per cent (90%) of the gross to be split fifty-fifty between the Lessor and the Lessee. All expenditures for maintenance, dredging or improvements to be deducted from the balance of ninety-per cent (90%) of the gross [fol. 2057] revenue referred to above before the division of revenue is made between the Lessor and the Lessee. On monies advnaced by the Lessee for such purposes, interest at five per cent (5%) per annum was allowed until reimbursed from the gross revenue obtained as stated above.

Respondent owns certain land and buildings adjacent to its public utility wharfinger properties which are leased to private industries.

Land within the boundaries previously mentioned consists of 15.43 acres and is owned by the Respondent. That portion of the land devoted to public utility wharfinger operations is 7.2799 acres upon which stand six (6) Terminal Unit Buildings. The balance of the land and buildings thereon is used in warehouse business or leased to private companies.

Generally described, Respondent's property consists of certain piers, docks, warehouses, storage yard, machine shop, sheds and other buildings, equipment and appurtenances necessary to carry on Respondent's business. The only mechanical bulk cargo handling equipment on San Francisco Bay is located on this property.

Facilities for berthing vessels consists of two so-called "finger type" piers (Nos. 1 and 2) and Berth No. 3 Quay Wall and are available at all times for shipping. Rail switching services from and to the property are performed by the Howard Terminal Railway, which interchanges with the Southern Pacific Company and The Western Pacific Railroad Company.

[fol. 2058] Respondent performs the following wharfinger services as defined in its tariff, to wit: (See definition of Terms, Page 132.)

(1) *Service and Charges for the Account of the Vessel:*

(a) Service Charges.
(b) Dockage Charges.
(c) Miscellaneous Charges:
Taking, releasing and shifting lines between dock and the vessel.

(2) *Service and Charges for the Account of the Cargo:*

(a) Toll Charges.
(b) Wharf Demurrage Charges.
(c) Pool Car Assembling Charges.
(d) Charge for Weighing.
(e) Charge for Taring.
(f) Charge for Labeling—Case.
(g) Charge for Strapping—Case.
(h) Charge for Stencilling.
(i) Charge for Scraping and Remarking.
(j) Charge for Loading or Unloading of Cars or Trucks.

The following are tariffs filed with this Commission covering wharfinger services by the Respondent:

Howard Terminal Tariff No. 1, C. R. C. No. 1: (Original tariff effective June 1, 1929).

Naming Rates, Charges, Rules and Regulations for Tolls, Service, Dockage and Miscellaneous Services which are usually assessed against the carrier.

Howard Terminal Tariff No. 2, C. R. C. No. 2: (Original tariff effective June 1, 1929).

Naming Rates, Charges, Rules and Regulations for Wharf, Demurrage, Weighing, Loading and Unloading of Cars or Trucks and Miscellaneous Services which are usually assessed against the shipper or consignee.

Howard Terminal Tariff No. 3, C. R. C. No. 3: (Original tariff effective June 1, 1929).

Naming Rules and Regulations for Absorption of Charges.

[fol. 2059] Following are tariffs filed covering warehouse services:

Howard Terminal Warehouse Tariff No. 13, C. R. C. No. 13: (Original tariff effective August 5, 1926, filed by L. A. Bailey, Agent).

Naming Charges for Storage and Incidental Handling of Specific Commodities.

California Warehouse Tariff Bureau Warehouse Tariff No. 1-E, C. R. C. No. 83, Howard Terminal Participant: (Original tariff effective June 1, 1935, filed by L. A. Bailey, Agent).

Naming Charges for Storage and Incidental Handling of Merchandise.

Steamship services available at so-called water "terminal" rates from and to Howard Terminal are as follows:

Intercoastal—Atlantic (via Panama Canal):

Served by all carriers in the trade, both eastbound and westbound. Freight steamers usually call direct to load or discharge, but exercise their option to barge cargo be-

tween the Terminal and their San Francisco pier when operating conditions or volume of freight does not warrant the shifting of steamer. Passenger steamers operated by three of the carriers in the trade do not shift from their San Francisco piers and all cargo is barged from or to the San Francisco piers. All barging costs absorbed by the carriers.

Intercoastal—Gulf (via Panama Canal):

Served by all carriers in the eastbound trade and by one (of two) carrier in the westbound trade. Steamers usually call direct to load or discharge, but exercise their option to barge cargo between the Terminal and their San Francisco pier when operating conditions or volume of [fol. 2060] freight does not warrant the shifting of steamer.

Coastwise (California, Oregon, Washington and British Columbia Ports):

Served by several of the carriers in the trade, either by calling direct or by barging the cargo at their expense between the Terminal and their San Francisco piers. Other carriers in the trade restrict service to direct calls only for a minimum of 100 tons per vessel, but inasmuch as they will not assume Service Charges charged by the Terminal it is not practical to offer services other than those regularly serving the Terminal.

European (Service between Pacific Coast and Europe via Panama Canal):

Served by all carriers in the eastbound trade by direct call only for a minimum of approximately 100 tons per vessel. Steamship conference ruling prohibits barging at expense of carrier when cargo available does not approximate 100 tons per vessel. Westbound European cargo is delivered by direct call of the vessel or barged at the expense of the carrier as inducements offer. Such cargo for Oakland discharge is acceptable at the carrier's option.

Mexican (Service between Oakland and West Coast of Mexico):

The two carriers in this trade serve Howard Terminal through barge service between San Francisco piers and the Terminal, absorbing the cost thereof.

Transpacific:

[fol. 2061] Served irregularly by direct call of vessels as inducements offer.

Other Services:

Served irregularly by direct call of vessels as inducements offer.

[fol. 2062] 4. *Parr-Richmond Terminal Corporation, Ltd.*:

Respondent, Parr-Richmond Terminal Corporation, Ltd., is a corporation organized in July 1927 and existing under and by virtue of the laws of the State of California. It is engaged, among other things, as a public utility wharfinger as that term is defined in Section 2 of the Public Utilities Act of California.

Said Respondent was organized for the purpose of taking over the obligations and responsibility for control and management of the Harbor of Richmond, together with its facilities and adjacent industrial properties, located in the City of Richmond, Contra Costa County, California, for a period of fifty (50) years under a lease between the City of Richmond, as lessor, and Parr Terminal Company, as lessee. The parent company of the Respondent, viz., Parr Terminal Company, assigned the lease to the Respondent on May 11, 1928, who has since operated the demised premises as lessee.

Property used in the wharfinger business is in the City of Richmond, Contra Costa County, California, and consists of separate units known as Parr-Richmond Terminals Nos. 1, 2, 3 and 4, respectively. Parr-Richmond Terminal No. 1 (Outer Harbor) is located at the foot of Garrard Boulevard; Parr-Richmond Terminals Nos. 2 and 3 (Inner Harbor) are located at the foot of South Tenth Street; and Parr-Richmond Terminal No. 4 (Point San Pablo or Western Harbor), is located at the end of the Peninsula dividing San Francisco and San Pablo bays.

Investment in buildings, construction and equipment operated and used by Respondent in the wharfinger business, [fol. 2063] as of December 31, 1934, is as follows:

Item	Undepreciated value as of 12-31-34	Depreciated value as of 12-31-34
Buildings and construction:		
By City of Richmond	$ 883,000.00	
By Parr-Richmond Terminal	273,000.00	
	$1,156,000.00	
Equipment:		
By Parr-Richmond Terminal	5,825.17	$4,057.83
Total	$1,161,825.17	

The land used in wharfinger operations is owned by the City of Richmond, except for about eleven acres purchased by the Respondent at a cost of $19,236.

Other expenditures on the Richmond Harbor included approximately $1,400,000 by the City of Richmond and $842,788 by the Federal Government for dredging, training walls, bulkheads and similar improvements to make the wharves and docks available to ocean-going vessels in all trades.

Respondent is authorized to issue 5,000 shares of common stock at a par value of $100 per share, of which 2,015 are issued and outstanding, all of which shares are owned and held by the Parr Terminal Company, parent company of the Respondent.

Said Parr Terminal Company is a corporation organized under the laws of the State of California and is engaged in the leasing or sub-leasing of industrial lands in the City of Oakland, California, and elsewhere.

Respondent was authorized by this Commission in Deci- [fol. 2064] sion No. 19930, dated June 25, 1928, in Applications Nos. 14562 and 14721, to issue $400,000 in bonds bearing interest at six and one-half per cent per annum, of which $263,000 are issued and outstanding. Notes payable as of December 31, 1934, total $47,755.47, with rate of interest varying from six per cent to seven per cent.

Revenues and expenses from wharfinger operations, January 1, 1930, to October 31, 1935, inclusive, are as follows:

Year	Operating Revenue	Operating Expense	Net Operating Revenue	Net Operating Loss
1930	$88,089.80	$63,833.69	$24,256.11	
1931	89,221.96	79,755.97	9,465.99	
1932	105,855.71	92,405.64	13,450.07	
1933	128,527.43	102,201.48	26,325.95	
1934	116,783.11	109,821.15	6,961.96	
1935	107,501.21	88,240.25	19,260.96	(10 mos.)
	$635,979.22	$536,258.18	$99,721.04	

The City of Richmond received as lease rental for the use of its wharfinger facilities the following amounts for the same period:

1930	$12,706.06
1931	3,039.27
1932	6,564.08
1933	14,396.11
1934	5,194.87
1935 (10 Mos.)	10,892.01
	$52,792.40

[fol. 2065] Rental and lease arrangements in effect at Respondent's wharfinger facilities are:

On October 18, 1926, the Respondent's parent company as lessee, entered into a lease with the City of Richmond as lessor whereby the control and management of the Harbor of Richmond, its facilities and adjacent industrial properties became the responsibility of the lessee. Said lease was assigned to the Respondent on May 11, 1928, and provides, among other things, substantially the following terms and conditions, to wit:

Term: The term of the lease shall be fifty (50) years from and after the date hereof.

Filling: The lessor, at its sole cost and expense, shall fill in all those portions of the demised premises necessary for industrial or other purposes.

New Construction and Maintenance: The lessor shall, when and as may be required, construct such additional wharves, piers and other improvements and facilities at its sole cost and expense. Lessor shall further maintain in

good condition and repair all of the wharves, piers and other improvements and facilities, which are now upon, or which may hereafter be constructed or established by it upon the demised premises, at its sole cost and expense.

Insurance: The lessor shall, at its sole cost and expense, insure and keep insured, during the term of this lease, any and all improvements owned or controlled by lessor upon, or used in connection with the demised premises, except certain improvements constructed by the lessee.

[fol. 2066] *Use of Premises:* The lessee shall perform its duties as a public wharfinger without preference or discrimination, and permit all parties desiring to use the facilities to do so upon equal terms and conditions.

Rates and Charges: The lessee shall have the right to prescribe such rates, charges, rules and regulations in connection with the operation of the public wharfinger facilities as it shall deem proper, and to assess and collect such rates or charges.

New Construction Upon Lessee's Private Land: The lessee shall be reimbursed by the lessor for the cost of constructing any building or improvements, which will promote commerce and navigation at the harbor of lessor and built upon that land owned by the lessee adjacent to Parr-Richmond Terminal No. 3 located on the Inner Harbor. The lessor shall reimburse the lessee for the entire cost of all such improvements constructed by the lessee at its expense, including interest thereon at the rate of five per cent (5%) per annum, said reimbursement, however, to be made out of the lessor's share of all monies payable to the lessor under the rental provisions of the lease. (The above provision of the lease applies to the south unit of Parr-Richmond Terminal No. 3, which was constructed by the Respondent; the north unit being built by the City of Richmond).

Sub-leasing of Demised Premises: The lessee has the right to sub-let all or any part of the demised premises and collect rent and other charges therefor, subject to the consent of the lessor.

Taxes: All taxes upon wharves, piers and other improvements located on the demised premises shall be for the account of the lessor. Taxes paid by lessee upon the land, buildings and improvements owned by it located immedi-

[fol. 2067] ately adjacent to Parr-Richmond Terminal No.

3 (including the south unit of Parr-Richmond Terminal No. 3) in the Inner Harbor shall be refunded or repaid by the lessor to the lessee.

Channel Dredging and Maintenance: The lessor shall, during the term of the lease, dredge and maintain the channels and turning basins necessary to accommodate ocean-going vessels, leading from the navigable water of San Francisco Bay to all of the demised premises.

Rental: The lessee shall pay the lessor as rental for use and occupation of the demised premises, and as consideration for the lease, one-half of the net income resulting from the management and operation of the same, said net income to be computed as follows, to-wit: All sums received by either lessor or lessee from the operation of the demised premises regardless of the kind or character (including the amount of taxes repaid or refunded by the lessor to lessee as provided elsewhere in the lease), shall be considered to be gross income. (This not only includes revenue derived from public wharfinger operations but also from rentals obtained through sub-leasing of industrial lands to private parties). From the gross income shall be deducted all the actual expenses incurred by the lessee in the management, operation and development of the demised premises and facilities. The difference shall be deemed the net income, one-half of which shall be paid to the lessor as rental and compensation as aforesaid.

Wharfinger Facilities: The structures used in the wharfinger business and demised unto the lessee by the lessor [fol. 2068] are known and designated as Parr-Richmond Terminal No. 1 (Outer Harbor) and Parr-Richmond Terminals Nos. 2 and 3 (Inner Harbor).

In connection with the wharfinger facilities mentioned above under lease from the City of Richmond by the Respondent, the latter has sub-let certain public utility wharfinger property consisting of approximately 40,000 square feet of space within the walls of Parr-Richmond Terminal No. 3 (Inner Harbor) to a private industry, namely Filice & Perrelli Canning Company, canner and packer of canned fruits and vegetables. Lease provides for a rental of one and one-half cents (1½¢) per square foot per month for a term of four (4) years and six (6) months. This Commission approved the lease in Decision No. 28142, decided July 31, 1935, in Application No. 20050.

In Application No. 20228, now pending before this Commission, Respondent applies for an order to lease certain public utility wharfinger property consisting of approximately 13,000 square feet of space within the walls of Parr-Richmond Terminal No. 4 (Point San Pablo or Western Harbor), a facility owned by Respondent, to a private industry, namely, Richmond Fisheries, Inc., who is engaged in the fish canning and processing business. Proposed lease provides a flat rental of $225 per month for a term of seven (7) years.

Respondent, under the terms of its lease with the City of Richmond, sub-leases certain land and buildings adjacent to the public utility wharfinger properties at the Outer Harbor and the Inner Harbor to private industries. At Point San Pablo the Respondent also leases certain land and build- [fol. 2069] ings owned by it to private industries, which include, among others, a lease between the Respondent and the Philippine Refining Corporation of New York, and a lease between the Respondent and the Pacific Molasses Company, Ltd. Both of these leases cover the rental of certain industrial land immediately adjacent to Parr-Richmond Terminal No. 4 (Point San Pablo) and further purport to give the two aforementioned companies as lessees certain rights and or privileges in the use of the public wharf without the assessment of any charge for such use.

Respondent purchased the public wharf and lands involved herein from the Richmond Belt Railway as authorized by this Commission in Decision No. 25159, decided September 6, 1932, in Application No. 17529. The two leases referred to above were originally executed between the respective parties and the Richmond Belt Railway on August 15, 1929, and assigned to the Respondent upon the purchase of the wharf and land.

Lease between the Respondent, as lessor, and The Pacific Molasses Company, Ltd., as lessee, provides, among other things, that:

(a) Lessee shall have the right to construct and maintain certain pipe lines on the wharf for the sole purpose of pumping molasses from ships into storage tanks located on the demised land or vice versa and for supplying steam to vessels.

(b) Lessee shall have the right to make such use of the wharf as is necessary and usual for the discharging by said pipe lines of molasses cargoes belonging to the lessee (irre-

spective of the ownership of the vessels discharging such [fol. 2070] cargoes), and without any dockage charge being made by the Respondent, as lessor, either to the lessee or to carrier for the use of said wharf in discharging each cargo.

(c) In case any shipment or movement of the products, property or merchandise of any character owned or handled by the lessee at Point San Pablo during the term of this lease, is made therefrom by means of the said wharf, then the lessee agrees to pay the lessor five cents per ton of 2,000 lbs., on each such shipment and movement so made.

Lease between the Respondent, as lessor, and the Philippine Refining Corporation of New York, as lessee, provides substantially the same terms and conditions as those contained in the lease with The Pacific Molasses Company, Ltd., outlined above except that the commodity to be handled is to consist of vegetable oils, and that toll charges as well as dockage charges shall be waived on all cargoes discharged.

Generally described, Respondent's property consists of four wharves, each equipped with a transit shed, together with spur tracks, storage yard, pipe lines, roadways, equipment and appurtenances necessary to carry on Respondent's business. Parr-Richmond Terminal No. 1 is served only by The Atchison, Topeka and Santa Fe Railway Company; Parr-Richmond Terminals Nos. 2, 3 and 4 are served jointly by The Atchison, Topeka and Santa Fe Railway Company and the Southern Pacific Company.

Respondent performs the following wharfinger services as defined in its tariff, to wit: (See Definition of Terms p. 132).

[fol. 2071] (1) *Service and Charges for the Account of the Vessel:*

(a) Service Charges.
(b) Dockage Charges.
(c) Miscellaneous Charges:
1. Charge for water supplied to vessels.
2. Taking, releasing and shifting lines between dock and the vessel.

(2) *Service and Charges for the Account of the Cargo:*

(a) Toll Charges.
(b) Wharf Demurrage Charges.

(c) Pool Car Assembling Charges.
(d) Weighing Charges.
(e) Charge for Taring.
(f) Charge for Case Labeling.
(g) Charge for Case Strapping.
(h) Charge for Stencilling.
(i) Charge for Scraping and Remarking.
(j) Charge for Loading or Unloading of Cars or Trucks.
(k) Charge for Piling and Breaking Down Sugar:
The charge for piling sugar beyond the normal height when placed on wharf demurrage and breaking such piles down for delivery. (Similar to the commonly used "handling charge".)

Rates, charges, rules and regulations covering the wharfinger services are published and filed with this Commission in Parr-Richmond Terminal Corporation, Ltd. Terminal Tariff No. 2, C. R. C. No. 2. Original tariff effective September 1, 1929.

Steamship services available at so-called water "terminal" rates from and to Parr-Richmond Terminals are as follows:

Intercoastal—Atlantic: (Via Panama Canal)

Served by all carriers in the trade, both eastbound and westbound. Freight steamers will usually call direct to load or discharge when the cargo amounts to several hundred tons, otherwise exercise their option to barge cargo between the terminal and their San Francisco piers when operating conditions or volume of freight does not warrant the shifting of steamer.

[fol. 2072] Passenger steamers operated by three of the carriers in the trade do not shift from their San Francisco piers and all cargo is barged from or to the San Francisco piers. All carriers absorb cost of barging cargo when performed.

Intercoastal—Gulf: (Via Panama Canal)

Served by all carriers in the eastbound trade. Vessels will usually direct to load when cargo offered amounts to several hundred tons, otherwise exercise their option to barge cargo between the Terminal and their San Francisco piers absorbing the cost thereof when operating conditions or volume of freight does not warrant the shifting of

vessel. In the westbound trade, rates apply only when the vessel has an aggregate of 250 tons or more for discharge at Respondent's terminal.

Coastwise: (Service between California, Oregon, Washington and British Columbia ports).

Between Respondent's terminal and ports in Oregon and Washington, rates apply only when the vessel will book the cargo in aggregate lots of 150 tons or more for a direct call. In the California intrastate trade, terminal rates apply but cargo is usually barged at the expense of the vessel as the offerings are not sufficient to warrant direct calls.

European: (Service between Pacific Coast and Europe via Panama Canal).

Service and rates withdrawn from Respondent's terminal on May 1, 1935, by all of the carriers in the trade.

Trans-Pacific:

Served irregularly by direct call of vesels to load or dis- [fol. 2073] charge cargo for a minimum ranging from 350 tons to 500 tons per vessel.

Other Services:

Served irregularly by direct call of vessels as inducements offer.

[fol. 2074] 5. *State Terminal Company, Limited:*

Respondent, State Terminal Company, Ltd., is a corporation organized in May 1931 and existing under and by virtue of the laws of the State of California. It is engaged, among other things, in the wharfinger business as a public utility as that term is defined in Section 2 of the Public Utilities Act of California. Since 1931 the Respondent has been continuously engaged as a public utility wharfinger.

Property used in the wharfinger operations is located at Third and Channel Streets, San Francisco, California, and is known as State Terminal Facility No. 56.

Respondent operates the facility under a regular monthly assignment from the Board of State Harbor Commissioners of the State of California for which a monthly wharf rental is paid. Such rentals, since June 1, 1931, have amounted to:

June 1, 1931 to January 1, 1932	$8,167.89
Jan. 1, 1932 to January 1, 1933	9,583.81
Jan. 1, 1933 to January 1, 1934	6,960.00
Jan. 1, 1934 to January 1, 1935	6,960.00

Investment in furniture and fixtures less depreciation amounts to $762.20, original cost $1,118.11.

The capital stock of State Terminal Co., Ltd., authorized and issued, consists of three (3) shares of common stock with no par value. Ownership of the stock is as follows:

Mr. H. B. Mills, President, State Terminal Co., Ltd.	1 share
Mr. H. F. Miller, Vice-President, State Terminal Co., Ltd., President, San Francisco Warehouse Co.	1 Share
Mr. H. S. Young, Member of Young, Hudson & Rabinowitz, attorneys	1 share
	3 shares

[fol. 2075] Respondent has no bonds or notes authorized, issued or outstanding.

Revenues and expenses from wharfinger operations since June 1, 1931 (date operations commenced) to October 31, 1935, inclusive, as follows:

Year	Operating Revenue	Operating Expense	Net Operating Revenue	Net Operating Loss
1931 (7 mos.)	$53,878.70	$50,365.31	$3,513.39	
1932	66,164.62	65,877.14	287.48	
1933	51,396.60	51,084.10	312.50	
1934	59,097.17	59,092.86	4.31	
1935 (10 mos.)	58,755.33	56,919.69	1,835.64	
	$289,292.42	$283,439.10	$5,953.32	Net operating income 6-1-31 to 10-31-35

The only rent or lease arrangement in effect at the State Terminal Company, Ltd., facility is that between the Respondent and the Board of State Harbor Commissioners of California. This arrangement is the so-called regular monthly assignment of space generally in effect along the San Francisco waterfront for which a monthly wharf rental is paid. The regular assignment, however, does not give assignee the exclusive use of the space and the Board of State Harbor Commissioners may at any time use said space for such other operations as they may deem expedient.

Generally described, Respondent's property consists of the first floor of State Terminal Facility No. 56, located on China Basin at Third and Channel Streets in San Fran-

cisco, together with the necessary equipment and appurtenances to carry on Respondent's business. The second [fol. 2076] floor of State Terminal Facility No. 56 is directly operated by the Board of State Harbor Commissioners as a shipside refrigeration terminal. Rail switching services from and to the property are performed by the State Belt Railroad.

Respondent performs the following wharfinger services as defined in its tariff, to wit: (See Definition of Terms page 132).

(1) *Service and Charges for Account of the Vessel:*

(a) Service Charges.

(b) Charges for Checking for Account of Carriers:
The charge for checking trans-shipment cargo into or out of ocean-going steamers.

(c) Dockage Charges:
This charge is assessed and collected for account of the Board of State Harbor Commissioners.

(2) *Service and Charges for Account of the Cargo:*

(a) Tolls-Wharfage Charges:
This charge is assessed and collected for account of the Board of State Harbor Commissioners.

(b) Wharf Demurrage Charges:
This charge is assessed and collected for account of the Board of State Harbor Commissioners.

(c) Handling In Charges or Handling Out Charges:
The charge for labor and incidental duties in receiving merchandise on Wharf Demurrage or taking delivery from Wharf Demurrage. (Does not include loading to or unloading from cars or trucks).

(d) Charge for Labor Handling Cargo Stopped in Transit:
The charge for labor of handling cargo consigned to specific vessel and ordered held beyond free time period.

(e) Pool Car Assembling Charge.

(f) Weighing Charge.

(g) Charge for Case Labeling.

(h) Charge for Case Strapping.

(i) Charge for Stencilling

(j) Charge for Scraping and Remarking.

(k) Charge for Loading or Unloading of Cars or Trucks.

[fol. 2077] Rates, charges, rules and regulations governing wharfinger services are published and filed with this Commission in State Terminal Company, Ltd., Terminal Tariff No. 1, C. R. C. No. 1. Original tariff effective July 15, 1931.

Respondent acts as a so called Pier Agent or Terminal Agent for a number of steamer lines operating in the Intercoastal, European and Trans-Pacific trades, whose vessels use the facility as their regularly established berth for the receipt and delivery of cargo. Other vessels in the Intercoastal or European trade not using Respondent's facility as their regular berth but having other piers assigned to them in San Francisco, will accept or deliver cargo under certain conditions at State Terminal by direct call of the vessel or by absorption of the transfer cost from or to their own assigned piers in order to be competitive with regular direct calling vessels.

Generally, application of water terminal rates by other than regular calling lines is restricted to cargo in storage at State Terminal, or in warehouse a part thereof, and to pool cars or portions thereof. Respondent's facility is the only one of its kind in San Francisco accepting such cargo for all carriers in the Intercoastal and European trades and was set up to meet competition of the wharfingers operating in the East Bay.

[fol. 2078] 6. W. C. Marr, M. S. Dodd and Nathan Moran, Copartners Doing Business as San Francisco Terminals:

Respondents, W. C. Marr, M. S. Dodd and Nathan Moran, copartners doing business as San Francisco Terminals, are engaged among other things in the wharfinger business as a public utility as that term is defined in Section 2 of the Public Utilities Act of California since April 29, 1935; and as a public utility car loader or unloader as that term is defined in Section 2 (L) of the Public Utilities Act of California since November 19, 1934.

Property used in the wharfinger operations is located at the foot of Taylor Street on the Embarcadero, San Francisco, California, and is known as Pier 45.

Respondents operate the facility primarily as a shipside storage terminal under an arrangement with the Board of State Harbor Commissioners of the State of California.

No wharf rental or charge of any character is paid to the Board of State Harbor Commissioners for the user thereof in the handling of cargo by the Respondents. The Board of State Harbor Commissioners do assess a charge for office space occupied by the Respondents on the facility. All charges derived from cargo handling are retained by the Respondents except tolls, dockage and wharf demurrage which are prescribed, assessed and collected by the Board of State Harbor Commissioners.

[fol. 2079] Generally described, the property of the Respondents consists of four (4) transit sheds on Pier 45 located at the foot of Taylor Street and the Embarcadero in the City and County of San Francisco, together with the equipment and appurtenances necessary to carry on a wharfinger business. Rail switching services from and to the property are performed by the State Belt Railroad.

Respondents perform the following wharfinger and or car loading or unloading services as defined in their tariffs, to wit: (See Definition of Terms, Page 132.)

(1) Service and Charges for Account of the Vessel:

(a) Service Charges.

(b) Charge for Checking for Account of Carriers:
The charge for checking transshipment cargo into or out of ocean going vessels.

(c) Dockage Charges:
This charge is assessed and collected for the account of the Board of State Harbor Commissioners.

(2) Service and Charges for Account of the Cargo:

(a) Tolls—Wharfage Charges:
This charge is assessed and collected for the account of the Board of State Harbor Commissioners.

(b) Wharf Demurrage Charges:
This charge is assessed and collected for the account of the Board of State Harbor Commissioners.

(c) Charge for Handling Bonded Merchandise on Wharf Demurrage:
The Charge assessed for labor handling bonded merchandise on wharf demurrage under certain conditions.

[fol. 2080] (d) Charge for Weighing:

The charge for weighing merchandise by individual package or by hand truck loads.

(e) Charge for Taring.

(f) Charge for Loading or Unloading of Cars or Trucks.

The following tariffs are filed with this Commission covering the services rendered by the Respondents, to wit:

San Francisco Terminals Car Loading—Car Unloading Tariff No. 1, C. R. C. No. 1:

(Original tariff effective November 19, 1934)

Naming Rates, Charges, Rules and Regulations for Weighing, Taring and Loading or Unloading of Cars or Trucks.

San Francisco Terminals Tariff No. 2, C. R. C. No. 2:

(Original tariff effective April 29, 1935.)

Naming Rates, Charges, Rules and Regulations for Tolls, Service, Dockage, Checking, Wharf Demurrage and Handling.

Wharfinger facilities of the Respondents are especially adapted to the storage of cargo and this is the primary purpose for which they are used. While none of the vessels operating in the various trade routes use the facilities as their regular established berth for the receipt or delivery of cargo, the services available are frequently utilized when such vessels for one reason or other cannot advantageously use their regular berths.

Pier devoted primarily to storage purposes.

[fol. 2081] 7. El Dorado Terminal Company:

Respondent, El Dorado Terminal Company, is a corporation organized in October of 1930 and existing under and by virtue of the laws of the State of California. It is engaged among other things in the wharfinger business as a public utility as that term is defined in Section 2 of the Public Utilities Act of California and was organized for the primary purpose of handling the waterborne commerce, both inbound and outbound of the parent company, namely, El Dorado Oil Works, manufacturer of coconut oil and byproducts from copra.

Land, buildings and equipment used in the wharfinger operations are owned by the Respondent and located at the

foot of Adeline Street on the Oakland Estuary in the City of Oakland, California.

Investment in land devoted to wharfinger purposes, consisting of three acres, is $250,405.17. This figure includes the cost of dredging berth to accommodate deep water vessels and the filling of land up to grade. The undepreciated and depreciated value as of December 31, 1934, on investments in buildings and equipment is as follows:

Undepreciated value as of 12-31-34	$120,572.89
Depreciated Value as of 12-31-34	106,883.04

Respondent is authorized to issue 5,000 shares of common stock with a par value of $100.00 per share, of which 4,000 shares have actually been issued to the parent company, namely, El Dorado Oil Works, for $400,000.00 in cash.

Differding says this tariff contains a rental charge of 3¢ per sq. ft.

[fol. 2082] Respondent has no bonds authorized, issued or outstanding.

Public utility wharfinger operations commenced February 23, 1934. Revenues and expenses from operations for the year 1934 are as follows:

Operating Revenues	$16,578.19
Operating Expenses	18,234.60
Net Operating Loss	$1,656.41

Respondent does not have any lease or rental arrangements in effect.

Generally described, Respondent's property consists of an open wharf about 420 feet in length with spur tracks thereon, overhead conveyors for handling of copra and similar cargoes in bulk, two mechanical blowers, tractor, track scale and other equipment and appurtenances necessary to carry on Respondent's business. Goods or merchandise requiring covered storage is provided in adjoining Warehouses owned by the El Dorado Oil Works. Spur tracks on the property connect with The Western Pacific Railroad Company.

Respondent's major business is the handling of cargoes consigned from or to the parent company, namely, El Dorado Oil Works, and it does not solicit other traffic.

Occasionally other traffic is handled when the vessel is loading or discharging at the Respondent's wharf in order to avoid an additional shift of the vessel for the latter's convenience. Such traffic consists of a very small part of the wharfinger operations.

[fol. 2083] Respondent performs the following wharfinger services as defined in its tariff, to wit: (See Definitions of Terms, Page 132.)

(1) Service and Charges for the Account of the Vessel:
  (a) Service Charges.
  (b) Dockage Charges.
(2) Service and Charges for the Account of the Cargo:
  (a) Toll Charges.
  (b) Wharf Demurrage Charges.
  (c) Charge for Weighing.
  (d) Charge for Taring.
  (e) Charge for Strapping—Case.
  (f) Charge for Stencilling.
  (g) Charge for Scraping and Remarking.
  (h) Loading or Unloading of Cars or Trucks.

In addition to the above-described wharfinger services, Respondent performs the stevedoring of all cargo handled over its facilities.

Rates, charges, rules and regulations covering wharfinger services are published and filed with this Commission in El Dorado Terminal Company Tariff No. 1, C. R. C. No. 1, originally effective February 23, 1934.

Generally, the wharf is served by eastbound vessels in the transpacific trade carrying bulk copra in lots of several hundred tons consigned to the parent company, namely, El Dorado Oil Works. Occasionally vessels in the Pacific Coastwise or intercoastal trade lift minimum lots of cargo at the wharf. No regular service is maintained by any carrier from or to the wharf.

This company performs all wharfinger services, including stevedoring.

[fol. 2084] 8. J. M. Atthowe, an Individual Doing Business as Berkeley Transportation Company:

Respondent, J. M. Atthowe, an individual doing business as Berkeley Transportation Company, is engaged among other things as the lessee of a certain public utility owned

by the City of Berkeley, Alameda County, California, known and designated as the Berkeley Municipal Wharf.

Property used in the public utility wharfinger operations is located near the western terminus of University Avenue in the City of Berkeley, California, upon tidelands deeded to the City of Berkeley by the State of California in 1913.

The facility was constructed by the Golden Gate Ferry Company for the City of Berkeley as a consideration for a lease permitting operation of an automobile ferry over tidelands owned by the said City of Berkeley.

On May 31, 1935, the Respondent, as the highest and only bidder for the above-described public utility at public auction for lease, entered into lease with the City of Berkeley upon substantially the following terms and conditions, to wit:

> Term: The term of the lease shall be three (3) years from and after the date hereof.
>
> Rent: The Lessee agrees to pay the sum of One Hundred Dollars ($100.00) per month each and every month during the term of the lease.
>
> Use of Premises: The Lessee agrees to use, maintain, conduct and operate, for and on behalf of the City of Berkeley, *as a public municipal wharf*, the premises leased and to this end permit said wharf to be used, without preference or discrimination, by all persons desiring to use it for the delivery over it of freight to [fol. 2085] and from vessels and to permit its use, without preference or discrimination, by any vessel desiring to use it for the loading or discharging of cargo over it, but such use by shippers or vessels shall be subject to the rules, regulations and charges as prescribed in Ordinance No. 41-N.S. of the City of Berkeley, or as may be prescribed in any other ordinance supplementary thereto or amendatory thereof which may be hereafter adopted by the Council of the City of Berkeley.
>
> That the Lessee may make no rules, regulations or charges governing the use of said wharf in conflict with or differing from those now prescribed in said Ordinance No. 41-N.S. or such other ordinance supplementary thereto or amendatory thereof as may be hereafter adopted by the Council of the City of Berkeley.

That Lessee agrees to perform for and on behalf of the City of Berkeley all the services required of and prescribed for Wharfinger or Chief Wharfinger in said Ordinance No. 41-N.S. or as may be required of or prescribed for Wharfinger or Chief Wharfinger in any other ordinance supplementary thereto or amendatory thereof, which may during the term of this lease be adopted by the Council of the City of Berkeley, and whenever a duty is by said Ordinance imposed upon the Wharfinger or Chief Wharfinger, such duty shall be deemed to be imposed upon the Lessee.

Revenue and Expense: The Lessee shall receive and keep for his own use and benefit all moneys derived from dockings and tolls received from the operation of said public wharf, and shall pay all costs, expenses, charges, salaries and wages which shall be incurred in connection with the operation of said public wharf, except that the City of Berkeley shall not be relieved of its obligation to pay for the lighting of said public wharf, and the ferry pier adjoining the same.

[fol. 2086] Insurance:

The Lessee shall provide and pay for insurance against fire in the sum of Ten Thousand Dollars ($10,000.00) on goods and merchandise stored on said public wharf, or in transit thereon; also, that Lessee shall carry public liability insurance in the sum of $50,000/$100,000 and property damage insurance in the sum of $2,500.

Generally described, Respondent's property consists of a shedded wharf located on the ferry pier of the Southern Pacific Golden Gate Ferries, Ltd., near the western terminus of University Avenue in the City of Berkeley. The facility is not served by any railroad and is on shallow water served only by bay or river watercraft.

Rates, charges, rules and regulations in effect at the wharf are as prescribed in Ordinance No. 41-N.S. (as amended by Ordinances Nos. 61-N. S., 577-N. S. and 1163-N. S.) of the City of Berkeley. Such ordinance provides for Toll Charges, Dockage Charges and Wharfage (the latter

being assessed for storage beyond the free time period permitted.)

Respondent, doing business as Berkeley Transportation Company, conducts common carrier operations by vessel under the provisions of sub-section (d) of Section 50 of the Public Utilities Act upon the inland waters of the State of California and regularly serves the Berkeley Municipal Wharf as a terminal point in its transbay service.

[fol. 2087] 9. South San Francisco Terminal Company.

Respondent, South San Francisco Terminal Company is a corporation organized in March, 1927, and existing under and by virtue of the laws of the State of California. It is engaged in the wharfinger business as a public utility as that term is defined in Section 2 of the Public Utilities Act of California. The Respondent has been continuously engaged since 1927 as a public utility wharfinger. The record indicates that Respondent was organized by those in control of South San Francisco Land and Improvement Company for the purpose, primarily, of furnishing public terminal facilities in South San Francisco.

Property used by Respondent is located at South San Francisco adjacent to the packing plant of Swift & Company, and consists of an open wharf approximately 140 feet long and 32 feet wide, equipped with pipe line for handling petroleum products and chutes for the handling of live stock. The wharf is located upon land belonging to South San Francisco Land and Improvement Company and is served by shallow-draft bay and river watercraft.

Original investment in structures and betterments is $6,836.40, against which there has been set up a reserve for accrued depreciation of $5,000.00.

The capital stock of South San Francisco Terminal Company, authorized and issued, consists of sixty-five shares of common stock at the par value of $100 per share. (Decision No. 18282, dated April 27, 1927, in Application No. 13624). [fol. 2088] All of the stock of the Respondent is owned by the South San Francisco Land and Improvement Company, a land holding company operating in South San Francisco.

Respondent has no bonds or notes authorized, issued or outstanding.

Revenues and expenses from wharfinger operations from January 1, 1930, to December 31, 1934, inclusive, are as follows:

Year	Operating Revenue	Operating Expense	Net Operating Revenue	Net Operating Loss
1930	$2,150.61	$1,985.39	$165.22	
1931	1,368.02	1,590.96		$222.94
1932	648.37	1,562.09		913.72
1933	685.45	1,544.53		859.08
1934	733.13	1,739.50		1,006.37
	$5,585.58	$8,422.47	$165.22	$3,002.11
				165.22
Net operating *loss* 1-1-30 to 12-31-34				$2,836.89

Rates, charges, rules and regulations published and filed with this Commission in South San Francisco Terminal Company Local Wharfage Tariff No. 1, C. R. C. No. 1, are for the use of the wharf only and do not include handling of any description. All charges in effect apply against the cargo, viz., Tolls and Wharf Demurrage. Original tariff effective June 1, 1927.

[fol. 2089] 10. The Paraffine Companies, Inc.:

Respondent, The Paraffine Companies, Inc., is a corporation organized and existing under and by virtue of the laws of the State of California.

As a public utility wharfinger, as that term is defined in Section 2 of the Public Utilities Act of California, Respondent has published and filed a tariff with this Commission. It is engaged, among other things, as a manufacturer of roofing materials, paints and floor coverings with a local plant at Emeryville, California.

Property used in the wharfinger operations is located near the western terminus of Powell Street in the City of Emeryville, California, adjacent to the Bayshore highway now being constructed connecting with the San Francisco-Oakland Bay Bridge and the manufacturing plant of the Respondent.

Investment in land devoted to wharfinger purposes is $21,038.98 and in buildings the sum of $39,409.99, with accrued depreciation thereon of $4,419.49 to June 30, 1935.

Respondent entered into an agreement with the City of Emeryville on April 8, 1929, providing certain terms and conditions in connection with the wharf, substantially as follows, to wit:

(a) That the Respondent shall pay each year during the term of the agreement the sum of $250.00 for the right of ingress and egress across tideland property owned by the City of Emeryville in order to reach Respondent's property by water.

(b) That the Respondent, upon establishing a public wharfinger operation, shall pay to the City of Emeryville five per cent (5%) of the gross revenue [fols. 2090-2095] derived from all tonnage handled over the wharf. This in addition to the sum named in Paragraph (a).

(c) That the Respondent shall have exclusive control over all rates and charges on tonnage handled over the wharf.

(d) That the term of the agreement shall be for a period of fifty (50) years after the date thereof.

Generally described, Respondent's facilities consist of a shedded wharf on shallow water available only to Bay and river watercraft. It is not served by railroad tracks. Shipments between the wharf and Respondent's manufacturing plant are handled on "jitneys and trailers" on a runway crossing the Bayshore highway now under construction by means of an underpass. Other shippers and consignees desirous of using the wharf at present would have to utilize the "jitney and trailer" system of delivery to the wharf. The underpass will not accommodate a truck. It appears that up to the present the wharf has only been used in the handling of shipments from or to Respondent's own manufacturing plant.

Respondent filed its Tariff No. 1, C. R. C. No. 1 with this Commission on May 29, 1935, effective June 3, 1935, naming a toll charge of 15c per ton upon all cargo conveyed on, over or through the facility designated as the Emeryville Wharf. The tariff names no other rate or charge nor does it provide for any rules or regulations in connection with cargo handled.

[fol. 2096] Table No. I

Trend on Terminal Tonnage During Depression Years

(Based on Tonnage Handled by the Encinal and Howard Terminals. 1930 Tonnage = 100)

Year	Index
1930	100
1931	92
1932	88
1933	104
1934	102
1935 (10 Mos.)	108

Tonnage values for the Parr-Richmond Terminal were not included as necessary steamship services were not obtained by this facility until about 1932. Furthermore, this port has enjoyed a very heavy increase in its movement of liquids in bulk since 1932. The State Terminal Co., Ltd., and the San Francisco Terminals did not commence operation until June, 1931, and April, 1935, respectively. For these reasons their tonnages were omitted to avoid distortion of the above index.

[fol. 2097] *Explanation of Tables II to XIV Inclusive*

Comparison of the Several Charges Assessed at San Francisco, Bay Ports and Stockton:

There follows herewith tables drawn up for the purpose of facilitating comparison: first, between different ports and terminals; and secondly, between charges assessed the various trades and cargoes at the same terminal. The tables provide such a comparison of service charges, dockage, toll, car loading, car unloading, wharf demurrage and warehouse storage charges. They have been used to develop and substantiate the general analysis appearing in this report and are added here to complete the record and to serve for future reference.

[fol. 2098]

Table Number II.

Comparison of Service Charges in Effect at San Francisco Bay Ports and Stockton

Terminal	Coastwise								Inland Waterway				
	Inbound				Outbound				Inbound			Outbound	
	Cargo N. O. S. Carloads	Cargo N. O. S. L. C. L.	Cargo N. O. S. Direct to Open Car or Barge	Flour and Feed	Cargo N. O. S. Carloads	Cargo N. O. S. L. C. L.	Automobiles, Each	Flour and Feed	Cargo N. O. S.	Onions and Potatoes	Transshipped Cargo to Ocean Vessels	Cargo N. O. S.	Transshipped Cargo ex Ocean Vessels
Encinal Terminals	35	50	27½	30	30	40	100	30	25	30	Free	25	Free
Howard Terminal	35	50	27½	30	30	40	100	30	25	30	Free	25	Free
Parr-Richmond Terminal Corp.	30	40	27½	30	30	40	100	30	25	30	Free	25	Free
State Terminal Company; Ltd.	35	50	27½	30	30	40	100	30	—	—	—	—	—
San Francisco Terminals	35	40	27½	30	30	40	100	30	—	—	—	—	—
The Paraffine Companies, Inc. (Emeryville Wharf)	—	—	—	—	—	—	—	—	—	—	—	—	—
So. San Francisco Terminal Co.	—	—	—	—	—	—	—	—	—	—	—	—	—
Berkeley Transportation Company (Berkeley Municipal Wharf)	—	—	—	—	—	—	—	—	—	—	—	—	—
El Dorado Terminal Company	35	50	27½	30	30	40	—	30	25	30	Free	25	Free
State of California (Board of Harbor Commissioners)—S. F.	—	—	—	—	—	—	—	—	—	—	—	—	—
Port of Oakland	35	50	27½	30	30	40	100	30	25	30	Free	25	Free
Port of Stockton	10[1]	10[1]	5[1]	20[1][2]	10[1]	10[1]	—	20[1][2]	—	—	—	—	—

[1] Charge is termed "receiving and delivery charge" for checking cargo from or to vessel.
[2] Applies on flour only.

[fol. 2099]

Table Number II.

Comparison of Service Charges in Effect at San Francisco Bay Ports and Stockton
(Continued)

Terminal	Intercoastal								Foreign							
	Inbound				Outbound				Inbound				Outbound			
	Cargo N. O. S. In Bulk	Cargo N. O. S. Direct	Cargo N. O. S. Other Than Above	Tin Plate	Cargo N. O. S.	Copper Slabs Direct	Lumber Per M.F.B.M.	Oil In Bulk Direct	Cargo N. O. S. In Bulk	Cargo N. O. S. Direct	Cargo N. O. S. Other Than Above	Fertilizers	Cargo N. O. S.	Barley	Copra, In Bags	Meal, Fish, In Bags
Encinal Terminals	10	27½	50	35	40	27½	37½	10	10	25	50	25	40	25	25	25
Howard Terminal	10	27½	50	35	40	27½	37½	10	10	25	50	25	40	25	25	25
Parr-Richmond Terminal Corp.	10	27½	40	35	40	27½	37½	10	10	25	40	25	40	25	25	25
State Terminal Company, Ltd.	10	27½	50	35	40	27½	37½	15	10	25	50	25	40	25	25	25
San Francisco Terminals	10	27½	40	35	40	27½	37½	10	10	25	50	25	40	25	25	25
The Paraffine Companies, Inc. (Emeryville Wharf)	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
So. San Francisco Terminal Co.	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Berkeley Transportation Company (Berkeley Municipal Wharf)	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
El Dorado Terminal Company	10	—	50	35	40	27½	37½	10	10	25	50	25	40	25	25	25
State of California (Board of Harbor Commissioners)—S. F.	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Port of Oakland	10	27½	50	35	40	27½	37½	10	10	25	50	25	40	25	25	25
Port of Stockton	—	5 [1]	20 [1]	20 [1]	20 [1]	5 [1]	—	—	—	5 [1]	2 [1]	20 [1]	20 [1]	20 [1]	20 [1]	20 [1]

[1] Charge is termed "receiving and delivery charge" for checking cargo from or to vessel.
Amounts are cents per 2000 pounds.

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Table Number III.

Comparison of Service Charges in Effect at San Francisco Bay Ports and Stockton
(Continued)

Terminal	Hawaiian				Transpacific										
	Inbound	Outbound			Inbound					Outbound					
	All Cargo	Cargo N. O. S.	Oil In Bulk Direct	Cargo N. O. S. In Bulk	Cargo N. O. S. Direct	Cargo N. O. S. Other Than Above	Meals & Meal Cake	Seed	Sugar	Cargo N. O. S. Direct	Cargo N. O. S.	Lumber Per M.F.B.M.	Oil In Bulk Direct	Petroleum Products, In Packages	Petroleum Products, In Packages, Direct
Encinal Terminals	40	40	15	15	35	50	32½	32½	32½	30	50	50	15	30	30
Howard Terminal	40	40	15	15	35	50	32½	32½	32½	30	50	50	15	30	30
Parr-Richmond Terminal Corp.	40	40	15	15	35	50	32½	32½	32½	30	50	30	10	Free	Free
State Terminal Company, Ltd.	40	40	40	25**	35**	35**	25**	25**	25**	30	50**	50	15	25	20
San Francisco Terminals	40	40	40	25	35	35	25	25	25	25	35	50	15	25	20
The Paraffine Companies, Inc. (Emeryville Wharf)	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
So. San Francisco Terminal Co.	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Berkeley Transportation Company (Berkeley Municipal Wharf)	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
El Dorado Terminal Company	35	35	—	15	35	50	32½	30	32½	30	50	50	15	30	30
State of California (Board of Harbor Commissioners)—S. F.	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Port of Oakland	40	40	15	15	35	50	32½	32½	32½	30	50	50	15	30	30
Port of Stockton	20[2]	20[2]	—	—	5[2]	20[2]	20[2]	20[2]	20[2]	20[2]	20[2]	—	—	20[2]	5[2]

** Means weight or measurement as per ship's manifest.
[2] Charge is termed "receiving and delivery charge" for checking cargo from or to vessel.

Table Number IV

Comparison of Dockage Charges and Tolls in Effect at San Francisco Bay Ports and Stockton

Terminal	Dockage Charges								Tolls							
	Coastwise and Inland Waterways[1]				Off Shore[2]				Coastwise and Inland Waterways				Off Shore			
	Loading Cargo	Discharging Cargo	Lying Idle With No Cargo Aboard	Lying Idle With Cargo On Board	Loading Cargo	Discharging Cargo	Lying Idle With No Cargo Aboard	Lying Idle With Cargo On Board	Merchandise, N. O. S. Including Supplies and Stores	Automobiles, Each	Ballast, etc. Direct	Livestock, Cattle, Per Head	Merchandise, N. O. S. Including Supplies and Stores	Automobiles, Each	Ballast, etc. Direct	Livestock, Cattle, Per Head
ncinal Terminals	½[3]	F[3]	½	F	Free	Free	½	½	5	10	5	1	15	**	10	3
loward Terminal	½[3]	F[3]	½	F	Free	Free	½	½	5	10	5	1	15	**	10	3
arr-Richmond Terminal Corp.	½[3]	F[3]	½	F	Free	Free	½	½	5	10	5	5	15	**	10	15
ate Terminal Company, Ltd.	F[4] ½[7]	F	½	F	½	½	½	½	5	10	5	5	15	25	10	15
an Francisco Terminals	F[4] ½[7]	F	½	F	½	½	½	½	5	10	5	5	15	25	10	15
he Paraffine Companies, Inc. (Emeryville Wharf)	—	—	—	—	—	—	—	—	15	—	—	—	15	—	—	
. San Francisco Terminal Co.	—	—	—	—	—	—	—	—	5	—	—	5	5	—	—	5
erkeley Transportation Company (Berkeley Municipal Wharf)	½[2]	F	½	F	—	—	—	—	5	—	5	5	5	—	5	5
Dorado Terminal Company	½[3]	F[3]	½	F	Free	Free	½	½	5	10	5	1	15	**	10	3
ate of California (Board of Harbor Commissioners)—S. F.	F[6] ½[7]	F	½	F	½	½	½	½	5	10	5	5	15	25	10	15
ort of Oakland	½[3]	F[3]	½	F	Free	Free	½	½	5	10	5	1	15	**	10	3
ort of Stockton	½	½	½	½	½	½	½	½	5	10	5	5	15	25	10	15

[1] When "service charges" are paid by Coastwise vessels, the dockage charges shall not exceed a maximum of ten cents (10¢) per ton based on cargo loaded or discharged at the terminal.
[2] Applies when vessel does not load more cargo than one-fifth (1/5) the N. R. T. of such vessel.
[3] Applies when vessel loads cargo in excess of one-fifth (1/5) the N. R. T. of the vessel.
[4] Rates shown as "½" indicate half dockage rate of 1¢ per ton per day of 24 hours for the first 200 net registered tonnage measurement of the vessel, and 3/8¢ for each additional ton.
ates shown as "F" indicate full dockage rate of 2¢ per ton per day of 24 hours for the first 200 net registered tonnage measurement of the vessel, and ¾¢ for each additional ton, except erkeley Municipal Wharf which is 2¢ for the first 200 N. R. T. and ½¢ for each additional ton.
** Means weight or measurement as per ship's manifest.

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Table Number V.

Comparison of Car Loading Charges in Effect at San Francisco Bay Ports and Stockton

Terminal	Car Loading															
	Hawaiian				Coastwise				All Others							
	Merchandise, N.O.S.	Wallboard, Cane Fibre	Pineapple, Destined Rail to Eastern Points	Pineapple, Destined Locally	Merchandise, N.O.S.	Canned Goods	Grain N.O.S.	Paper and Paper Articles N.O.S.	Merchandise, N.O.S.	Canned Goods N.O.S.	Canned Goods, Destined Rail to Eastern Points	Fertilizers in Packages	Hardware, N.O.S.	Pipe, N.O.S.	Paper Articles N.O.S.	Iron or Steel, N.O.S.
Encinal Terminals	40	95	50	40	52	45	30	35	50	40	50	35	45	70	45	45
Howard Terminal	40	95	50	40	52	45	30	35	50	40	50	35	45	70	45	45
Parr-Richmond Terminal Corp.	50	50	50	40	50	40	50	45	50	40	50	35	45	70	45	45
State Terminal Company, Ltd.	50	50	50	40	50	40	35	45	50	40	50	35	45	70	45	45
San Francisco Terminals	50	50	40	40	52	40	30	35	50	40	40	35	45	70	45	45
The Paraffine Companies, Inc. (Emeryville Wharf)	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
So. San Francisco Terminal Co.	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Berkeley Transportation Company (Berkeley Municipal Wharf)	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
El Dorado Terminal Company	50	50	40	40	50	40	50	45	50	40	40	35	45	70	45	45
State of California (Board of Harbor Commissioners)—S. F.	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Port of Oakland	40	40	50	40	52	45	30	35	50	40	50	35	45	70	45	45
Port of Stockton (See Note)	50[4]	40	40	40	50[4]	40	45	50[4]	50[4]	40	40	40	50[4]	50[4]	50[4]	50[4]
	40[5]				40[5]			40[5]	40[5]				40[5]	40[5]	40[5]	40[5]

Note: Rates as published by Sierra Stevedoring Company and Stockton Terminal and Stevedoring Company.

[4] Rate per 2,000 lbs. when not exceeding 120 cu. ft. per 2,000 lbs.

[5] Rate per 40 cu. ft. when exceeding 120 cu. ft. per 2,000 lbs.

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Table Number VI

Comparison of Car Unloading Charges in Effect at San Francisco Bay Ports and Stockton

Terminal	Car Unloading											
	Hawaiian			All Others								
	Merchandise, N.O.S.	Lumber, Per M.F.B.M.	Brick, Loose, Per M.	Merchandise, N.O.S.	Canned Goods	Dried Fruit	Lumber, Per M.F.B.M.	Petroleum Products in Packages	Paper and Paper Articles, N.O.S.	Sugar, Direct to Ship	Sugar
Encinal Terminals	40	135	150	50	40	40	100	40	40	20	30
Howard Terminal	40	70	150	50	40	40	100	40	40	20	30
Parr-Richmond Terminal Corporation	50	100	—	50	40	40	100	40	40	20	30
State Terminal Company, Ltd.	50	100	—	50	40	40	100	40	40	20	30
San Francisco Terminals	50	100	—	50	40	40	100	40	40	20	30
The Paraffine Companies, Inc. (Emeryville Wharf)	—	—	—	—	—	—	—	—	—	—	—
South San Francisco Terminal Company	—	—	—	—	—	—	—	—	—	—	—
Berkeley Transportation Company (Berkeley Municipal Wharf)	—	—	—	—	—	—	—	—	—	—	—
El Dorado Terminal Company	50	100	—	50	40	40	100	40	40	20	30
State of California (Board of Harbor Commissioners)—San Francisco	—	—	—	—	—	—	—	—	—	—	—
Port of Oakland	40	70	150	50	40	40	100	40	40	20	30
Port of Stockton (See Note)	50[1]	80	65 (Flat Cars)	50[1]	30	30	80	40	50[1]	20	30
	40[2]		95 (Box Cars)	40[2]					40[2]		

Note: Rates as published by Sierra Stevedoring Company and Stockton Terminal and Stevedoring Company.

[1] Rate per 2,000 lbs. when not exceeding 120 cu. ft. per 2,000 lbs.

[2] Rate per 40 cu. ft when exceeding 120 cu. ft. per 2,000 lbs.

[fol. 2104]

Table Number VII

Comparison of Wharf Demurrage Charges and Warehouse Storage Charges After Expiration of Free Time Period
Rates in Cents per Ton of 2,000 Pounds

Commodity and Terminals	Number of Days																	
	5	10	15	20	25	30	40	50	60	70	80	90	105	120	135	150	165	180
Ammonia, Sulphate of, In Bags:																		
Port of Oakland, El Dorado, Encinal, Howard, Parr-Richmond	6¼	12½	18¾	25	31¼	37½	50	62½	75	87½	100	112½	131¼	150	168¾	187½	206¼	225
State Terminals & S. F. Terminals	7½	7½	7½	7½	20	20	20	20	35	35	35	50	50	80	80	110	110	140
S. F. Piers—Penalty Wharf Demurrage	25	75	125	175	225	275	375	475	575	675	775	875	1025	1175	1325	1475	1625	1775
S. F. Piers—Bulkhead Demurrage	12½	25	37½	37½	50	62½	75	100	112½	125	150	162½	187½	225	250	275	300	337½
S. F. Bay Warehouses (Handling Charge—70 cents)	115	115	115	115	115	115	160	160	160	205	205	205	250	250	295	295	340	340
Port of Stockton	6¼	12½	18¾	25	31¼	37½	50	62½	75	87½	100	112½	131¼	150	168¾	187½	206¼	225
Canned Goods, N.O.S., in Cases:																		
Port of Oakland, El Dorado, Encinal, Howard & Parr-Richmond	6¼	12½	18¾	25	31¼	37½	50	62½	75	87½	100	112½	131¼	150	168¾	187½	206¼	225
State Terminal & S. F. Terminals	15	15	15	15	40	40	40	40	70	70	70	100	100	130	130	160	160	190
S. F. Piers—Penalty Wharf Demurrage	25	75	125	175	225	275	375	475	575	675	775	875	1025	1175	1325	1475	1625	1775
S. F. Piers—Bulkhead Demurrage	12½	25	37½	37½	50	62½	75	100	112½	123	150	162½	187½	225	250	275	300	337½
S. F. Bay Warehouses (Handling Charge—90 cents)	138	138	138	138	138	138	186	186	186	234	234	234	282	282	330	330	378	378
Encinal Terminal Warehouses (Handling Charge—90 cents)	138	138	138	138	138	138	186	186	186	234	234	234	282	282	330	330	378	378
Howard Terminal Warehouses (Handling Charge—90 cents)	138	138	138	138	138	138	186	186	186	234	234	234	282	282	330	330	378	378
Port of Stockton	6¼	12½	18¾	25	31¼	37½	50	62½	75	87½	100	112½	131¼	150	168¾	187½	206¼	225

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Table Number VII

Comparison of Wharf Demurrage Charges and Warehouse Storage Charges After Expiration of Free Time Period
Rates in Cents per Ton of 2,000 Pounds

Number of Days																										
5	10	15	20	25	30	40	50	60	70	80	90	105	120	135	150	165	180	200	220	240	260	280	300	315	330	345	360
6¼	12½	18¾	25	31¼	37½	50	62½	75	87½	100	112½	131¼	150	168¾	187½	206¼	225	250	275	300	325	350	375	393¾	412½	431¼	450
7½	7½	7½	7½	20	20	20	20	35	35	35	50	50	80	80	110	110	140	140	170	170	200	200	230	230	260	260	290
25	75	125	175	225	275	375	475	575	675	775	875	1025	1175	1325	1475	1625	1775	1975	2175	2375	2575	2775	2975	3125	3275	3425	3575
12½	25	37½	37½	50	62½	75	100	112½	125	150	162½	187½	225	250	275	300	337½	362½	400	437½	475	500	537½	562½	600	625	650
115	115	115	115	115	115	160	160	160	205	205	205	250	250	295	295	340	340	385	430	430	475	520	520	565	565	610	610
6¼	12½	18¾	25	31¼	37½	50	62½	75	87½	100	112½	131¼	150	168¾	187½	206¼	225	250	275	300	325	350	375	393¾	412½	431¼	450
6¼	12½	18¾	25	31¼	37½	50	62½	75	87½	100	112½	131¼	150	168¾	187½	206¼	225	250	275	300	325	350	375	393¾	412½	431¼	450
15	15	15	15	40	40	40	40	70	70	70	100	100	130	130	160	160	190	190	220	220	250	250	280	280	310	310	340
25	75	125	175	225	275	375	475	575	675	775	875	1025	1175	1325	1475	1625	1775	1975	2175	2375	2575	2775	2975	3125	3275	3425	3575
12½	25	37½	37½	50	62½	75	100	112½	123	150	162½	187½	225	250	275	300	337½	362½	400	437½	475	500	537½	562½	600	625	650
138	138	138	138	138	138	186	186	186	234	234	234	282	282	330	330	378	378	426	474	474	522	522	570	618	618	666	666
138	138	138	138	138	138	186	186	186	234	234	234	282	282	330	330	378	378	426	474	474	522	522	570	618	618	666	666
138	138	138	138	138	138	186	186	186	234	234	234	282	282	330	330	378	378	426	474	474	522	522	570	618	618	666	666
6¼	12½	18¾	25	31¼	37½	50	62½	75	87½	100	112½	131¼	150	168¾	187½	206¼	225	250	275	300	325	350	375	393¾	412½	431¼	450

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Table Number VIII

Comparison of Wharf Demurrage Charges and Warehouse Storage Charges After Expiration of Free Time Period
Rates in Cents Per Ton of 2,000 Pounds

Commodity and Terminals	Number of Days																			
	5	10	15	20	25	30	40	50	60	70	80	90	105	120	135	150	165	180	200	220
Cement, Building, In Sacks:																				
Port of Oakland, El Dorado, Encinal, Howard, Parr-Richmond	10	20	30	40	50	60	80	100	120	140	160	180	210	240	270	300	330	360	400	440
State Terminal & S. F. Terminals	15	15	15	15	40	40	40	40	70	70	70	100	100	130	130	160	160	190	190	220
S. F. Piers—Penalty Wharf Demurrage	25	75	125	175	225	275	375	475	575	675	775	875	1025	1175	1325	1475	1625	1775	1975	2175
S. F. Piers—Bulkhead Demurrage	12½	25	37½	37½	50	62½	75	100	112½	125	150	162½	187½	225	250	275	300	337½	362½	400
S. F. Bay Warehouses (Handling Charge—70 cents)	105	105	105	105	105	105	140	140	140	175	175	175	210	210	245	245	280	280	315	350
Howard Terminal Warehouses (Handling Charge—70 cents)																				
Encinal Terminal Warehouses (Handling Charge—70 cents)	100	100	100	100	100	100	130	130	130	160	160	160	190	190	220	220	250	250	280	310
Port of Stockton	10	20	30	40	50	60	80	100	120	140	160	180	210	240	270	300	330	360	400	440

Table Number VIII

Comparison of Wharf Demurrage Charges and Warehouse Storage Charges After Expiration of Free Time Period
Rates in Cents Per Ton of 2,000 Pounds

Number of Days																										
5	10	15	20	25	30	40	50	60	70	80	90	105	120	135	150	165	180	200	220	240	260	280	300	315	330	345	360
10	20	30	40	50	60	80	100	120	140	160	180	210	240	270	300	330	360	400	440	480	520	560	600	630	660	690	720
15	15	15	15	40	40	40	40	70	70	70	100	100	130	130	160	160	190	190	220	220	250	250	280	280	310	310	340
25	75	125	175	225	275	375	475	575	675	775	875	1025	1175	1325	1475	1625	1775	1975	2175	2375	2575	2775	2975	3125	3275	3425	3575
12½	25	37½	37½	50	62½	75	100	112½	125	150	162½	187½	225	250	275	300	337½	362½	400	437½	475	500	537½	562½	600	625	650
105	105	105	105	105	105	140	140	140	175	175	175	210	210	245	245	280	280	315	350	350	385	420	420	455	455	490	490
100	100	100	100	100	100	130	130	130	160	160	160	190	190	220	220	250	250	280	310	310	340	370	370	400	400	430	430
10	20	30	40	50	60	80	100	120	140	160	180	210	240	270	300	330	360	400	440	480	520	560	600	630	660	690	720

Table Number IX.

Comparison of Wharf Demurrage Charges and Warehouse Storage Charges After Expiration of Free Time Period
Rates in Cents per Ton of 2,000 Pounds

Commodity & Terminals	Number of Days																		
	5	10	15	20	25	30	40	50	60	70	80	90	105	120	135	150	165	180	200	220
Merchandise, N. O. S. in Pkg.:																				
Port of Oakland, El Dorado Encinal, Howard, Parr-Richmond	10	20	30	40	50	60	80	100	120	140	160	180	210	240	270	300	330	360	400	440
State Terminal & S. F. Terminals	15	15	15	15	40	40	40	40	70	70	70	100	100	130	130	160	160	190	190	220
S. F. Piers—Penalty Wharf Demurrage	25	75	125	175	225	275	375	475	575	675	775	875	1025	1175	1325	1475	1625	1775	1975	2175
S. F. Piers—Bulkhead Demurrage	12½	25	37½	37½	50	62½	75	100	112½	125	150	162½	187½	225	250	275	300	337½	362½	400
S. F. Bay Warehouses (Handling Charge 70 cents—Rates based on 40 cu. ft. per 2000 lbs.	115	115	115	115	115	115	160	160	160	205	205	205	250	250	295	295	340	340	385	430
Port of Stockton	10	20	30	40	50	60	80	100	120	140	160	180	210	240	270	300	330	360	400	440
Milk, Condensed, in Bbls.:																				
Port of Oakland, El Dorado Encinal, Howard, Parr-Richmond	10	20	30	40	50	60	80	100	120	140	160	180	210	240	270	300	330	360	400	440
State Terminal & S. F. Terminals	15	15	15	15	40	40	40	40	70	70	70	100	100	130	130	160	160	190	190	220
S. F. Piers—Penalty Wharf Demurrage	25	75	125	175	225	275	375	475	575	675	775	875	1025	1175	1325	1475	1625	1775	1975	2175
S. F. Piers—Bulkhead Demurrage	12½	25	37½	37½	50	62½	75	100	112½	125	150	162½	187½	225	250	275	300	337½	362½	400
S. F. Bay Warehouses, Encinal Terminal Warehouses (Handling Charge—87 cents)	124	124	124	124	124	124	161	161	161	198	198	198	235	235	272	272	309	309	346	383
Port of Stockton	10	20	30	40	50	60	80	100	120	140	160	180	210	240	270	300	330	360	400	440

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Table Number IX.

Comparison of Wharf Demurrage Charges and Warehouse Storage Charges After Expiration of Free Time Period
Rates in Cents per Ton of 2,000 Pounds

Number of Days																											
5	10	15	20	25	30	40	50	60	70	80	90	105	120	135	150	165	180	200	220	240	260	280	300	315	330	345	360
10	20	30	40	50	60	80	100	120	140	160	180	210	240	270	300	330	360	400	440	480	520	560	600	630	660	690	720
15	15	15	15	40	40	40	40	70	70	70	100	100	130	130	160	160	190	190	220	220	250	250	280	280	310	310	340
25	75	125	175	225	275	375	475	575	675	775	875	1025	1175	1325	1475	1625	1775	1975	2175	2375	1575	2775	2975	3125	3275	3425	3575
12½	25	37½	37½	50	62½	75	100	112½	125	150	162½	187½	225	250	275	300	337½	362½	400	437½	475	500	537½	562½	600	625	650
115	115	115	115	115	115	160	160	160	205	205	205	250	250	295	295	340	340	385	430	430	475	520	520	565	565	610	610
10	20	30	40	50	60	80	100	120	140	160	180	210	240	270	300	330	360	400	440	480	520	560	600	630	660	690	720
10	20	30	40	50	60	80	100	120	140	160	180	210	240	270	300	330	360	400	440	480	520	560	600	630	660	690	720
15	15	15	15	40	40	40	40	70	70	70	100	100	130	130	160	160	190	190	220	220	250	250	280	280	310	310	340
25	75	125	175	225	275	375	475	575	675	775	875	1025	1175	1325	1475	1625	1775	1975	2175	2375	2575	2775	2975	3125	3275	3425	3575
12½	25	37½	37½	50	62½	75	100	112½	125	150	162½	187½	225	250	275	300	337½	362½	400	437½	475	500	537½	562½	600	625	650
124	124	124	124	124	124	161	161	161	198	198	198	235	235	272	272	309	309	346	383	383	420	457	457	494	494	531	531
10	20	30	40	50	60	80	100	120	140	160	180	210	240	270	300	330	360	400	440	480	520	560	600	620	660	690	720

[fol. 2107]

Table Number X.

Comparison of Wharf Demurrage Charges and Warehouse Storage Charges After Expiration of Free Time Period
Rates in Cents Per Ton of 2,000 Pounds

Commodity and Terminals	Number of Days																		
	5	10	15	20	25	30	40	50	60	70	80	90	105	120	135	150	165	180	200	220
Milk, Dry Powdered, in Bbls.:																				
Port of Oakland, El Dorado, Encinal, Howard, Parr-Richmond	10	20	30	40	50	60	80	100	120	140	160	180	210	240	270	300	330	360	400	440
State Terminal & S. F. Terminals	15	15	15	15	40	40	40	40	70	70	70	100	100	130	130	160	160	190	190	220
S. F. Piers—Penalty Wharf Demurrage	25	75	125	175	225	275	375	475	575	675	775	875	1025	1175	1325	1475	1625	1775	1975	2175
S. F. Piers—Bulkhead Demurrage	12½	25	37½	37½	50	62½	75	100	112½	125	150	162½	187½	225	250	275	300	337½	362½	400
S. F. Bay Warehouses (Handling Charge—116 cents)	182	182	182	182	182	182	248	248	248	314	314	314	380	380	446	446	512	512	578	644
Port of Stockton	6¼	12½	18¾	25	31¼	37½	50	62½	75	87½	100	112½	131¼	150	168¾	187½	206¼	225	250	275
Nitrates, Potash & Soda Ash, in Pkges.:																				
Port of Oakland, El Dorado Encinal, Howard, Parr-Richmond	2½	5	7½	10	12½	15	20	25	30	35	40	45	52½	60	67½	75	82½	90	100	110
State Terminal & S. F. Terminals	7½	7½	7½	7½	20	20	20	20	35	35	35	50	50	80	80	110	110	140	140	170
S. F. Piers—Penalty Wharf Demurrage	25	75	125	175	225	275	375	475	575	675	775	875	1025	1175	1325	1475	1625	1775	1975	2175
S. F. Piers—Bulkhead Demurrage	12½	25	37½	37½	50	62½	75	100	112½	125	150	162½	187½	225	250	275	300	337½	362½	400
S. F. Bay Warehouses (Handling Charge—70 cents)	115	115	115	115	115	115	160	160	160	205	205	205	250	250	295	295	340	340	385	430
Port of Stockton	2½	5	7½	10	12½	15	20	25	30	35	40	45	52½	60	67½	75	82½	90	160	110

Table Number X.

Comparison of Wharf Demurrage Charges and Warehouse Storage Charges After Expiration of Free Time Period
Rates in Cents Per Ton of 2,000 Pounds

Number of Days																											
5	10	15	20	25	30	40	50	60	70	80	90	105	120	135	150	165	180	200	220	240	260	280	300	315	330	345	360
10	20	30	40	50	60	80	100	120	140	160	180	210	240	270	300	330	360	400	440	480	520	560	600	630	660	690	720
15	15	15	15	40	40	40	40	70	70	70	100	100	130	130	160	160	190	190	220	220	250	250	280	280	310	310	340
25	75	125	175	225	275	375	475	575	675	775	875	1025	1175	1325	1475	1625	1775	1975	2175	2375	2575	2775	2975	3125	3275	3425	3575
12½	25	37½	37½	50	62½	75	100	112½	125	150	162½	187½	225	250	275	300	337½	362½	400	437½	475	500	537½	562½	600	625	650
182	182	182	182	182	182	248	248	248	314	314	314	380	380	446	446	512	512	578	644	644	710	776	776	842	842	908	908
6¼	12½	18¾	25	31¼	37½	50	62½	75	87½	100	112½	131¼	150	168¾	187½	206¼	225	250	275	300	325	350	375	393¾	412½	431¼	450
2½	5	7½	10	12½	15	20	25	30	35	40	45	52½	60	67½	75	82½	90	100	110	120	130	140	150	157½	165	172½	180
7½	7½	7½	7½	20	20	20	20	35	35	35	50	50	80	80	110	110	140	140	170	170	200	200	230	230	260	260	290
25	75	125	175	225	275	375	475	575	675	775	875	1025	1175	1325	1475	1625	1775	1975	2175	2375	2575	2775	2975	3125	3275	3475	3575
12½	25	37½	37½	50	62½	75	100	112½	125	150	162½	187½	225	250	275	300	337½	362½	400	437½	475	500	537½	562½	600	625	650
115	115	115	115	115	115	160	160	160	205	205	205	250	250	295	295	340	340	385	430	430	475	520	520	565	565	610	610
2½	5	7½	10	12½	15	20	25	30	35	40	45	52½	60	67½	75	82½	90	100	110	120	130	140	150	157½	165	172½	180

[fol. 2108]

Table Number XI

Comparison of Wharf Demurrage Charges and Warehouse Storage Charges After Expiration of Free Time Period
Rates in Cents per Ton of 2,000 Pounds

Commodity and Terminals	Number of Days																			
	5	10	15	20	25	30	40	50	60	70	80	90	105	120	135	150	165	180	200	220
Paper, Toilet, In Cases:																				
Port of Oakland, El Dorado, Encinal, Howard, Parr-Richmond	10	20	30	40	50	60	80	100	120	140	160	180	210	240	270	300	330	360	400	440
State Terminal & S. F. Terminals	15	15	15	15	40	40	40	40	70	70	70	100	100	130	130	160	160	190	190	220
S. F. Piers—Penalty Wharf Demurrage	25	75	125	175	225	275	375	475	575	675	775	875	1025	1175	1325	1475	1625	1775	1975	2175
S. F. Piers—Bulkhead Demurrage	12½	25	37½	37½	50	62½	75	100	112½	125	150	162½	187½	225	250	275	300	337½	362½	400
S. F. Bay Warehouses (Handling Charge—300 cents)	500	500	500	500	500	500	700	700	700	900	900	900	1100	1100	1300	1300	1500	1500	1700	1900
Port of Stockton	10	20	30	40	50	60	80	100	120	140	160	180	210	240	270	300	330	360	400	440
Peat Moss, In Bales:																				
Port of Oakland, El Dorado, Encinal, Howard, Parr-Richmond	10	20	30	40	50	60	80	100	120	140	160	180	210	240	270	300	330	360	400	440
State Terminal & S. F. Terminals	15	15	15	15	40	40	40	40	70	70	70	100	100	130	130	160	160	190	190	220
S. F. Piers—Penalty Wharf Demurrage	25	75	125	175	225	275	375	475	575	675	775	875	1025	1175	1325	1475	1625	1775	1975	2175
S. F. Piers—Bulkhead Demurrage	12½	25	37½	37½	50	62½	75	100	112½	125	150	162½	187½	225	250	275	300	337½	362½	400
S. F. Bay Warehouses (Handling Charge—239 cents)	438	438	438	438	438	438	637	637	637	836	836	836	1035	1035	1234	1234	1433	1433	1632	1831
Port of Stockton	10	20	30	40	50	60	80	100	120	140	160	180	210	240	270	300	330	360	400	440

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Table Number XI

Comparison of Wharf Demurrage Charges and Warehouse Storage Charges After Expiration of Free Time Period
Rates in Cents per Ton of 2,000 Pounds

Number of Days																											
5	10	15	20	25	30	40	50	60	70	80	90	105	120	135	150	165	180	200	220	240	260	280	300	315	330	345	360
10	20	30	40	50	60	80	100	120	140	160	180	210	240	270	300	330	360	400	440	480	520	560	600	630	660	690	720
15	15	15	15	40	40	40	40	70	70	70	100	100	130	130	160	160	190	190	220	220	250	250	280	280	310	310	340
25	75	125	175	225	275	375	475	575	675	775	875	1025	1175	1325	1475	1625	1775	1975	2175	2375	2575	2775	2975	3125	3275	3425	3575
12½	25	37½	37½	50	62½	75	100	112½	125	150	162½	187½	225	250	275	300	337½	362½	400	437½	475	500	537½	562½	600	625	650
500	500	500	500	500	500	700	700	700	900	900	900	1100	1100	1300	1300	1500	1500	1700	1900	1900	2100	2300	2300	2500	2500	2700	2700
10	20	30	40	50	60	80	100	120	140	160	180	210	240	270	300	330	360	400	440	480	520	560	600	630	660	690	720
10	20	30	40	50	60	80	100	120	140	160	180	210	240	270	300	330	360	400	440	480	520	560	600	630	660	690	720
15	15	15	15	40	40	40	40	70	70	70	100	100	130	130	160	160	190	190	220	220	250	250	280	280	310	310	340
25	75	125	175	225	275	375	475	575	675	775	875	1025	1175	1325	1475	1625	1775	1975	2175	2375	2575	2775	2975	3125	3275	3425	3575
12½	25	37½	37½	50	62½	75	100	112½	125	150	162½	187½	225	250	275	300	337½	362½	400	437½	475	500	537½	562½	600	625	660
438	438	438	438	438	438	637	637	637	836	836	836	1035	1035	1234	1234	1433	1433	1632	1831	1831	2030	2229	2229	2428	2428	2627	2627
10	20	30	40	50	60	80	100	120	140	160	180	210	240	270	300	330	360	400	440	480	520	560	600	630	660	690	720

Table Number XII

Comparison of Wharf Demurrage Charges and Warehouse Storage Charges After Expiration of Free Time Period
Rates in Cents per Ton of 2,000 Pounds

Commodity and Terminals	Number of Days																	
	5	10	15	20	25	30	40	50	60	70	80	90	105	120	135	150	165	180
Fertilizer, N.O.S., In Bags:																		
Port of Oakland, El Dorado, Encinal, Howard, Parr-Richmond	10	20	30	40	50	60	80	100	120	140	160	180	210	240	270	300	330	360
State Terminal & S. F. Terminals	7½	7½	7½	7½	20	20	20	20	35	35	35	50	50	80	80	110	110	140
S. F. Piers—Penalty Wharf Demurrage	25	75	125	175	225	275	375	475	575	675	775	875	1025	1175	1325	1475	1625	1775
S. F. Piers—Bulkhead Demurrage	12½	25	37½	37½	50	62½	75	100	112½	125	150	162½	187½	225	250	275	300	337½
S. F. Bay Warehouses (Handling Charge—85 Cents)	130	130	130	130	130	130	175	175	175	220	220	220	265	265	310	310	355	355
Port of Stockton	10	20	30	40	50	60	80	100	120	140	160	180	210	240	270	300	330	360
Grain, N. O. S., In Bags:																		
Port of Oakland, El Dorado, Encinal, Howard, Parr-Richmond	3¾	7½	11¼	15	18¾	22½	30	37½	45	52½	60	67½	78¾	90	101¼	112½	123¾	135
State Terminal & S. F. Terminals	15	15	15	15	40	40	40	40	70	70	70	100	100	130	130	160	160	190
Islais Creek Grain Terminal Corporation	15	15	40	40	40	40	40	65	65	65	70	70	75	75	80	80	85	85
S. F. Piers—Penalty Wharf Demurrage	25	75	125	175	225	275	375	475	575	675	775	875	1025	1175	1325	1475	1625	1775
S. F. Piers—Bulkhead Demurrage	12½	25	37½	37½	50	62½	75	100	112½	125	150	162½	187½	225	250	275	300	337½
S. F. Bay Warehouses (Handling Charge—50 Cents)	80	80	80	80	80	80	110	110	110	140	140	140	170	170	200	200	230	230
Port of Stockton	3¾	7½	11¼	15	18¾	22½	30	37½	45	52½	60	67½	78¾	90	101¼	112½	123¾	135

Case No. 4090

Table Number XII

Comparison of Wharf Demurrage Charges and Warehouse Storage Charges After Expiration of Free Time Period
Rates in Cents per Ton of 2,000 Pounds

Number of Days																											
5	10	15	20	25	30	40	50	60	70	80	90	105	120	135	150	165	180	200	220	240	260	280	300	315	330	345	360
10	20	30	40	50	60	80	100	120	140	160	180	210	240	270	300	330	360	400	440	480	520	560	600	630	660	690	720
7½	7½	7½	7½	20	20	20	20	35	35	35	50	50	80	80	110	110	140	140	170	170	200	200	230	230	260	260	290
25	75	125	175	225	275	375	475	575	675	775	875	1025	1175	1325	1475	1625	1775	1975	2175	2375	2575	2775	2975	3125	3275	3425	3575
12½	25	37½	37½	50	62½	75	100	112½	125	150	162½	187½	225	250	275	300	337½	362½	400	437½	475	500	537½	562½	600	625	650
130	130	130	130	130	130	175	175	175	220	220	220	265	265	310	310	355	355	400	445	445	490	535	535	580	580	625	625
10	20	30	40	50	60	80	100	120	140	160	180	210	240	270	300	330	360	400	440	480	520	560	600	630	660	690	720
3¾	7½	11¼	15	18¾	22½	30	37½	45	52½	60	67½	78¾	90	101¼	112½	123¾	135	150	165	180	195	210	225	236¼	247½	258¾	270
15	15	15	40	40	40	40	70	70	70	70	100	100	130	130	160	160	190	190	220	220	250	250	280	280	310	310	340
15	15	40	40	40	40	40	65	65	65	70	70	75	75	80	80	85	85	90	90	95	100	100	105	110	110	115	115
25	75	125	175	225	275	375	475	575	675	775	875	1025	1175	1325	1475	1625	1775	1975	2175	2275	2575	2775	2975	3125	3275	3425	3575
12½	25	37½	37½	50	62½	75	100	112½	125	150	162½	187½	225	250	275	300	337½	362½	400	437½	475	500	537½	562½	600	625	650
80	80	80	80	80	80	110	110	110	140	140	140	170	170	200	200	230	230	260	290	290	320	350	350	380	380	410	410
3¾	7½	11¼	15	18¾	22½	30	37½	45	52½	60	67½	78¾	90	101¼	112½	123¾	135	150	165	180	195	210	225	236¼	247½	258¾	270

Table Number XIII

Comparison of Wharf Demurrage Charges and Warehouse Storage Charges After Expiration of Free Time Period
Rates in Cents per Ton of 2,000 Pounds

Commodity and Terminals	Number of Days																		
	5	10	15	20	25	30	40	50	60	70	80	90	105	120	135	150	165	180	200
Meal, Copra, In Bags:																			
Port of Oakland, El Dorado, Encinal, Howard, Parr-Richmond State Terminal & S. F. Terminals	6¼	12½	18¾	25	31¼	37½	50	62½	75	87½	100	112½	131¼	150	168¾	187½	206¼	225	250
S. F. Piers—Penalty Wharf Demurrage	15	15	15	15	40	40	40	40	70	70	70	100	100	130	130	160	160	190	190
S. F. Piers—Bulkhead Demurrage	25	75	125	175	225	275	375	475	575	675	775	875	1025	1175	1325	1475	1625	1775	1975
S. F. Bay Warehouses (Handling Charge—70 cents)	12½	25	37½	37½	50	62½	75	100	112½	125	150	162½	187½	225	250	275	300	337½	362½
Encinal Terminal Warehouses (Handling Charge—100 cents including car unloading & car loading)	105	105	105	105	105	105	140	140	140	175	175	175	210	210	245	245	280	280	315
Howard Terminal Warehouses	165	165	165	165	165	165	165	165	165	165	165	165	165	165	180	180	195	195	210
Port of Stockton	6¼	12½	18¾	25	31¼	37½	50	62½	75	87½	100	112½	131¼	150	168¾	187½	206¼	225	250
Coal, In Bulk:																			
Encinal Terminals	2½	5	7½	10	12½	15	20	25	30	35	40	45	52½	60	67½	75	82½	90	100
Port of Stockton	2½	5	7½	10	12½	15	20	25	30	35	40	45	52½	60	67½	75	82½	90	100
Coke, In Bulk:																			
Encinal Terminals (Traffic Charge—50 cents) Howard Terminal (Traffic Charge—50 cents)	75	75	75	75	75	75	100	100	100	125	125	125	150	150	175	175	200	200	225
Port of Stockton	2½	5	7½	10	12½	15	20	25	30	35	40	45	52½	60	67½	75	82½	90	100
Sand, In Bulk:																			
Encinal Terminals (Traffic Charge—30 cents) Howard Terminal (Traffic Charge—30 cents) Port of Oakland (Traffic Charge—30 cents) El Dorado Terminal (Traffic Charge—30 cents)	45	45	45	45	45	45	60	60	60	75	75	75	90	90	105	105	120	120	135
Port of Stockton	32½	35	37½	40	42½	45	50	55	60	65	70	75	82½	90	97½	105	112½	120	130
	2½	5	7½	10	12½	15	20	25	30	35	40	45	52½	60	67½	75	82½	90	100

Case No. 4090

Table Number XIII

Comparison of Wharf Demurrage Charges and Warehouse Storage Charges After Expiration of Free Time Period
Rates in Cents per Ton of 2,000 Pounds

Number of Days																											
5	10	15	20	25	30	40	50	60	70	80	90	105	120	135	150	165	180	200	220	240	260	280	300	315	330	345	360
6¼	12½	18¾	25	31¼	37½	50	62½	75	87½	100	112½	131¼	150	168¾	187½	206¼	225	250	275	300	325	350	375	393¾	412½	431¼	450
15	15	15	15	40	40	40	40	70	70	70	100	100	130	130	160	160	190	190	220	220	250	250	280	280	310	310	340
25	75	125	175	225	275	375	475	575	675	775	875	1025	1175	1325	1475	1625	1775	1975	2175	2375	2575	2775	2975	3125	3275	3425	3575
12½	25	37½	37½	50	62½	75	100	112½	125	150	162½	187½	225	250	275	300	337½	362½	400	437½	475	500	537½	562½	600	625	650
105	105	105	105	105	105	140	140	140	175	175	175	210	210	245	245	280	280	315	350	350	383	420	420	455	455	490	490
165	165	165	165	165	165	165	165	165	165	165	165	165	165	180	180	195	195	210	225	225	225	240	255	270	270	285	285
6¼	12½	18¾	25	31¼	37½	50	62½	75	87½	100	112½	131¼	150	168¾	187½	206¼	225	250	275	300	325	350	375	393¾	412½	431¼	450
2½	5	7½	10	12½	15	20	25	30	35	40	45	52½	60	67½	75	82½	90	100	110	120	130	140	150	157½	165	172½	180
2½	5	7½	10	12½	15	20	25	30	35	40	45	52½	60	67½	75	82½	90	100	110	120	130	140	150	157½	165	172½	180
75	75	75	75	75	75	100	100	100	125	125	125	150	150	175	175	200	200	225	250	250	275	300	300	325	325	350	350
2½	5	7½	10	12½	15	20	25	30	35	40	45	52½	60	67½	75	82½	90	100	110	120	130	140	150	157½	165	172½	180
45	45	45	45	45	45	60	60	60	75	75	75	90	90	105	105	120	120	135	150	150	165	180	180	195	195	210	210
32½	35	37½	40	42½	45	50	55	60	65	70	75	82½	90	97½	105	112½	120	130	140	150	160	170	180	187½	195	202½	210
2½	5	7½	10	12½	15	20	25	30	35	40	45	52½	60	67½	75	82½	90	100	110	120	130	140	150	157½	163	172½	180

[fol. 2111]

Table Number XIV

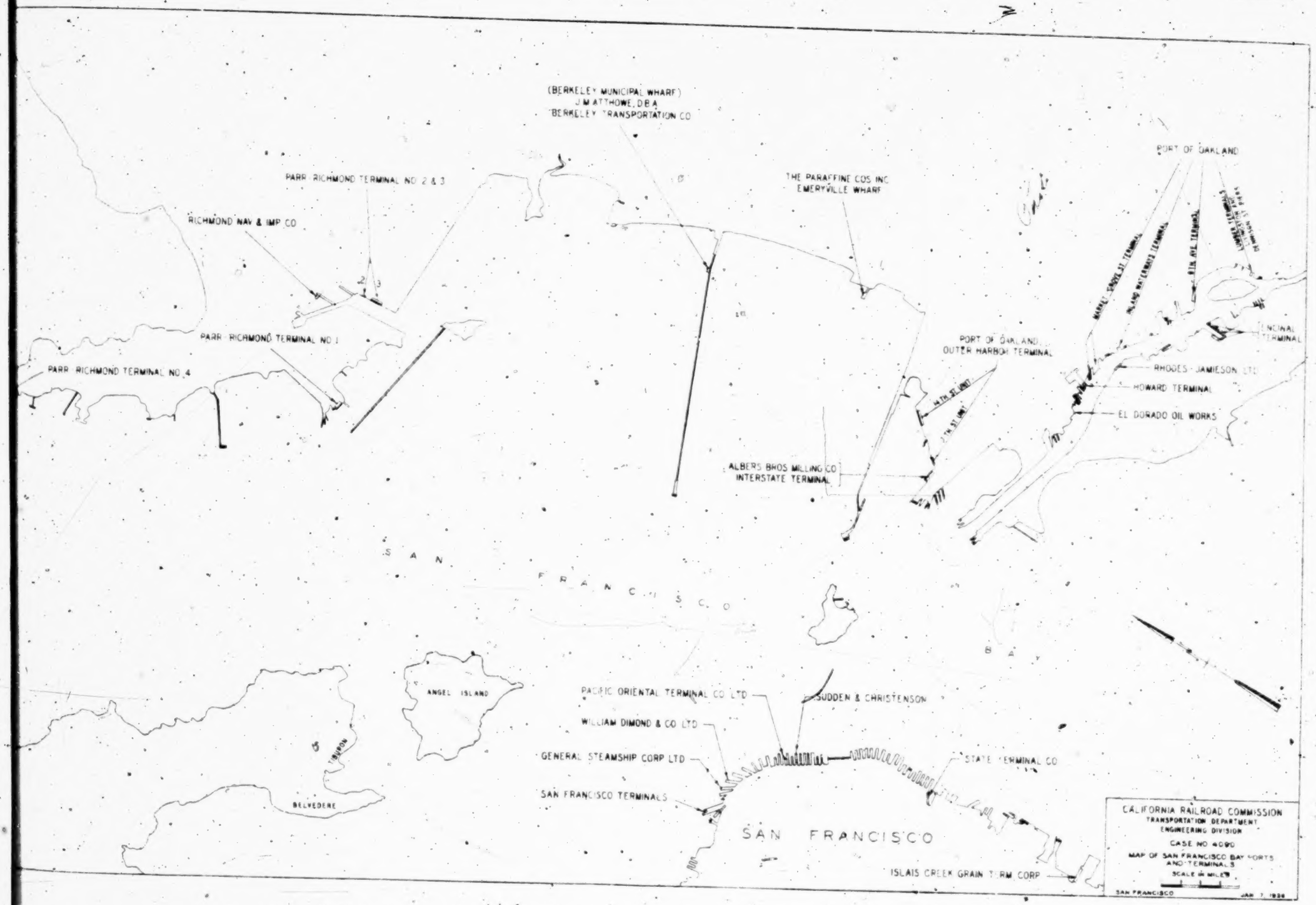
Wharfinger	Free Time Allowed Before Assessment of Wharf Demurrage or Storage Charges (Exclusive of Sundays and holidays except as noted) Coastwise	Intercoastal	Foreign or Offshore	Time Basis of Wharf Demurrage Charges (Including Sundays and holidays except as noted)
El Dorado Terminal	10 Days	10 Days	10 Days	Per Day
Encinal Terminal	10 Days	10 Days	10 Days	Per Day, except Coke and Sand, in bulk
Howard Terminal	10 Days	10 Days	10 Days	Per Day, except Coke and Sand, in bulk
Parr-Richmond Terminal	10 Days	10 Days	10 Days	Per Day
Port of Oakland	10 Days	10 Days	10 Days	Per Day
San Francisco Terminals State Terminal	10 Days	10 Days	10 Days	20 Days or fraction thereof, next 30 Days or fraction thereof, each succeeding 30 Days or fraction thereof
Port of Stockton	10 Cal. Days	10 Cal. Days	10 Cal. Days	Per Day
San Francisco Piers—Inbound	5 Days	5 Days	7 Days	Penalty Basis—5 Day period or fraction thereof
San Francisco Piers—Inbound	10 Days (In-transit Cargo)	10 Days (In-transit Cargo)	10 Days (In-transit Cargo)	Bulkhead Basis—7 Day periods or fraction thereof
San Francisco Piers—Outbound	5 Days	10 Days	10 Days	
Suisun Creek Grain Terminal (Handles Grain Only)	20 Days	20 Days	20 Days	10 Days or fraction thereof, next 30 Days or fraction thereof, each succeeding 30 Days or fraction thereof
South San Francisco Terminal	3 Days	3 Days	3 Days	Per Day 2 Days or fraction thereof, next
W. M. Atthowe (Berkeley Municipal Wharf)	3 Days	3 Days	3 Days	2 Days or fraction thereof, next 2 Days or fraction thereof, next 2 Days or fraction thereof, next 22 Days or fraction thereof, each succeeding 30 Days or fraction thereof

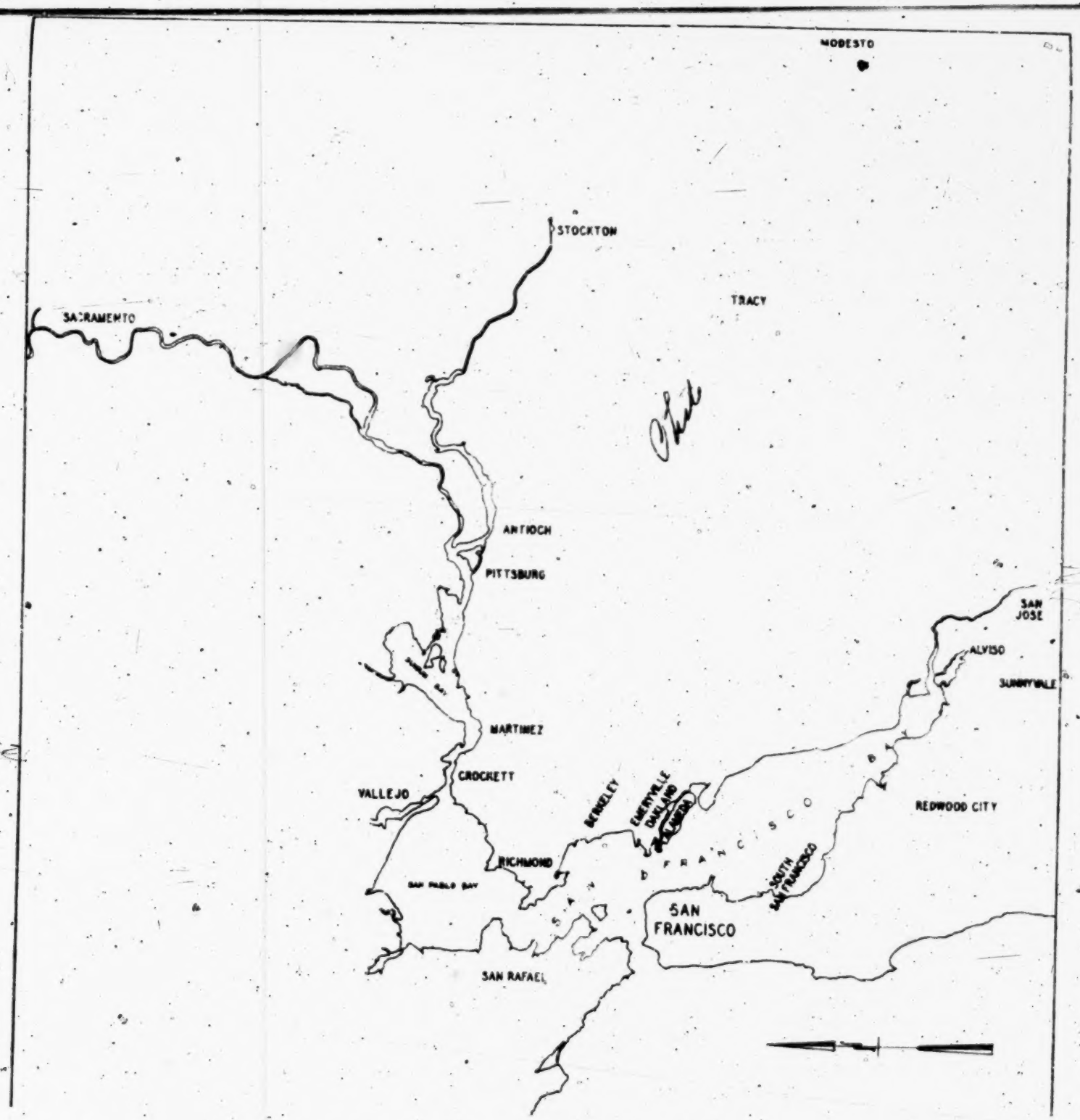
Note: Cal. Days means "Calendar days."
In-transit Cargo means "cargo routed through the port and billed to inland destination."

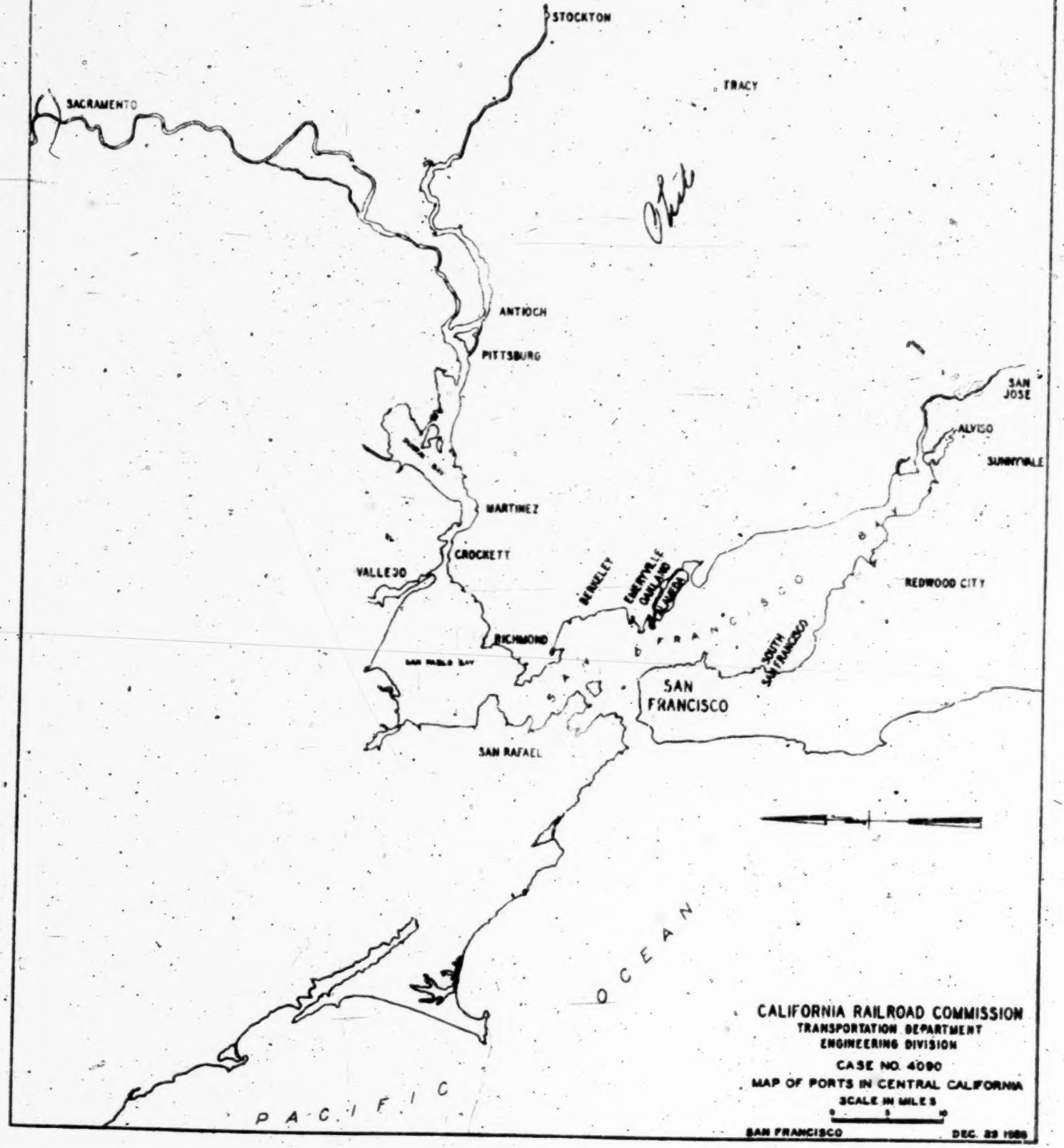
Table Number XIV

Wharf Demurrage or Storage Charges holidays except as noted)		Time Basis of Wharf Demurrage Charges (Including Sundays and holidays except as noted)	Wharf Demurrage Rate on Cargo, N.O.S.	
Intercoastal	Foreign or Offshore			
10 Days	10 Days	Per Day	Rate on Cargo, N.O.S.	2 cents per 2000 lbs. per day
10 Days	10 Days	Per Day, except Coke and Sand, in bulk	Rate on Cargo, N.O.S.	2 cents per 2000 lbs. per day
10 Days	10 Days	Per Day, except Coke and Sand, in bulk	Rate on Cargo, N.O.S.	2 cents per 2000 lbs. per day
10 Days	10 Days	Per Day	Rate on Cargo, N.O.S.	2 cents per 2000 lbs. per day
10 Days	10 Days	Per Day	Rate on Cargo, N.O.S.	2 cents per 2000 lbs. per day
10 Days	10 Days	20 Days or fraction thereof, next 30 Days or fraction thereof, each succeeding 30 Days or fraction thereof	Rate on Cargo, N.O.S.	15 cents per 2000 lbs. for 1st 20 days or fraction thereof 25 cents per 2000 lbs. for next 30 days or fraction thereof 30 cents per 2000 lbs. for each 30 days or fraction thereafter
10 Cal. Days	10 Cal. Days	Per Day	Rate on Cargo, N.O.S.	2 cents per 2000 lbs. per day
5 Days	7 Days	Penalty Basis—5 Day period or fraction thereof	Penalty Basis—25 cents per 2000 lbs for first 5 days or fraction thereof, then	
10 Days (In-transit Cargo)	10 Days (In-transit Cargo)	Bulkhead Basis—7 Day periods or fraction thereof	50 cents per 2000 lbs. for each 5 days or fraction thereafter Bulkhead Basis—12½ cents per 2000 lbs. for each 7 days or fraction thereof	
10 Days	10 Days	10 Days or fraction thereof, next 30 Days or fraction thereof, each succeeding 30 Days or fraction thereof	Rate on Crain	45 cents per 2000 lbs. for first 10 days or fraction thereof 25 cents per 2000 lbs. for next 30 days or fraction thereof 25 cents per 2000 lbs. for next 30 days or fraction thereof 5 cents per 2000 lbs. for each 30 days or fraction thereafter but not to extend beyond one year after arrival
3 Days	3 Days	Per Day. 2 Days or fraction thereof, next	Rate on Cargo, N.O.S.	2½ cents per 2000 lbs. per day 5 cents per 2000 lbs. for first 2 days or fraction thereof
3 Days	3 Days	2 Days or fraction thereof, next 2 Days or fraction thereof, next 2 Days or fraction thereof, next 22 Days or fraction thereof, each succeeding 30 Days or fraction thereof		5 cents per 2000 lbs. for next 2 days or fraction thereof 5 cents per 2000 lbs. for next 2 days or fraction thereof 5 cents per 2000 lbs. for next 2 days or fraction thereof 5 cents per 2000 lbs. for next 22 days or fraction thereof 25 cents per 2000 lbs. for each 30 days or fraction thereafter

rt and billed to inland destination."


(BERKELEY MUNICIPAL WHARF)
J M ATTHOWE, D B A
BERKELEY TRANSPORTATION CO
PARR RICHMOND TERMINAL NO 2 & 3
RICHMOND NAV & IMP CO
PARR RICHMOND TERMINAL NO 1
PARR RICHMOND TERMINAL NO 4
THE PARAFFINE COS INC
EMERYVILLE WHARF
PORT OF OAKLAND
PORT OF OAKLAND
OUTER HARBOR TERMINAL
RHODES - JAMIESON LTD
HOWARD TERMINAL
EL DORADO OIL WORKS
ALBERS BROS MILLING CO
INTERSTATE TERMINAL
S A N
F R A N C I S C O
B A Y
ANGEL ISLAND
TIBURON
BELVEDERE
PACIFIC ORIENTAL TERMINAL CO LTD
WILLIAM DIMOND & CO LTD
GENERAL STEAMSHIP CORP LTD
SAN FRANCISCO TERMINALS
SUDDEN & CHRISTENSON
STATE TERMINAL CO
SAN FRANCISCO
ISLAIS CREEK GRAIN TERM CORP
CALIFORNIA RAILROAD COMMISSION
TRANSPORTATION DEPARTMENT
ENGINEERING DIVISION
CASE NO 4090
MAP OF SAN FRANCISCO BAY PORTS
AND TERMINALS
SCALE IN MILES
SAN FRANCISCO
JAN 7 1938


MODESTO
STOCKTON
TRACY
SACRAMENTO
ANTIOCH
PITTSBURG
SAN JOSE
ALVISO
SUNNYVALE
MARTINEZ
CROCKETT
VALLEJO
BERKELEY
EMERYVILLE
OAKLAND
ALAMEDA
REDWOOD CITY
RICHMOND
SAN PABLO BAY
SOUTH SAN FRANCISCO
SAN FRANCISCO
SAN RAFAEL


STOCKTON
TRACY
SACRAMENTO
ANTIOCH
PITTSBURG
SAN JOSE
ALVISO
SUNNYVALE
MARTINEZ
CROCKETT
VALLEJO
BERKELEY
EMERYVILLE
OAKLAND
ALAMEDA
REDWOOD CITY
RICHMOND
SAN PABLO BAY
SAN FRANCISCO BAY
SOUTH SAN FRANCISCO
SAN FRANCISCO
SAN RAFAEL
PACIFIC OCEAN
CALIFORNIA RAILROAD COMMISSION
TRANSPORTATION DEPARTMENT
ENGINEERING DIVISION
CASE NO. 4090
MAP OF PORTS IN CENTRAL CALIFORNIA
SCALE IN MILES
0 5 10
SAN FRANCISCO DEC. 23 1926

2113

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[illegible]

[illegible]

Supreme Court of the United States

[illegible]

No. 20

[illegible] BOARD OF STATE HARBOR COMMISSIONERS FOR SAN FRANCISCO

[illegible] STATES OF AMERICA, UNITED STATES [illegible] COMMISSION, ENGINEAL [illegible] ET AL.

No. 22

CITY [illegible] A MUNICIPAL CORPORATION, [illegible] BOARD OF PORT COMMISSIONERS,

[illegible] STATES OF AMERICA, UNITED STATES [illegible] COMMISSION, ENGINEAL [illegible] ET AL.

APPEALS FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF CALIFORNIA

FILED [illegible] FEBRUARY 28, 1944.
MARCH 2, 1944.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1943

No. 20

STATE OF CALIFORNIA AND BOARD OF STATE HARBOR COMMISSIONERS FOR SAN FRANCISCO HARBOR, APPELLANTS,

vs.

THE UNITED STATES OF AMERICA, UNITED STATES MARITIME COMMISSION, ENCINAL TERMINALS, ET AL.

No. 22

CITY OF OAKLAND, A MUNICIPAL CORPORATION, ACTING BY AND THROUGH ITS BOARD OF PORT COMMISSIONERS, APPELLANTS,

vs.

THE UNITED STATES OF AMERICA, UNITED STATES MARITIME COMMISSION, ENCINAL TERMINALS, ET AL.

APPEALS FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF CALIFORNIA

VOL. II

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No. 63—Formula for the determination of port and marine terminal costs for rate making purposes	2326	1044

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., AUG. 25, 1943.

—7661

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[fol. 2114] EXHIBIT No. 61

California Railroad Commission, Transportation Department, Engineering Division

Final Report

Providing Recommendations in the Matter of the Marine Terminal Problem in the San Francisco Bay Area, With Supporting Data

Case No. 4090

Dr. Ford K. Edwards, Transportation Economist.
T. G. Differding, Assistant Engineer.

San Francisco, California, May 16, 1936.

[fol. 2115] May 20, 1936.

At Hearing:

General hearing held in Rm. 393, City Hall, Comm. Harris presiding. Mr. Differding offered reports from Selbers Bros. as to tonnage handled for others, leases of Parr Richmond & resolutions of State Harbor Board covering rates at Islais Creek Terminals. Exhibits not put in evidence.

Dr. Edwards then reviewed this report in true style of a modern "brain trust" representative, who without previous experience in shipping, calmly points out the solution to all the port problems. All theory, steeped in academic lore and uncontaminated with practical worries. In general, the placing of terminal rates on such a strict cost basis will tend to produce uniformity in practice and gradually spell the end of private terminal competition. Only the public can consistently meet the requirements set up over a long period.

However, the learned Doctor is unconscious of all this.

Also, I have misgivings as to the wisdom of forcing a general 7 to 10% increase of rates in the East Bay area. What will this do with the port development?

Nevertheless, this is the first serious effort to apply a cost analysis to terminal rates and to bring the situation onto a sound legal basis, and is much to be commended. Since my association with the port I have urged this necessity and

believe this will in the end, tend to produce better conditions in port operations.

[fol. 2116] San Francisco, California,

May 16, 1936.

Case No. 4090

Mr. Warren K. Brown, Director of Transportation, Building.

Transmitted herewith is the final report of the Engineering Division of the Transportation Department dealing with the determination of reasonable, compensatory and nondiscriminatory rates, rules, regulations and practices of public utility wharfingers engaged in marine terminal operation in the San Francisco Bay area.

This study has been made in connection with Case No. 4090, which is an investigation on the Commission's own motion into the rates, rules, regulations, practices, etc., of public utility wharfingers within the scope of the investigation.

Although the harbor facilities owned and operated by the City of Oakland, the Port District of Stockton, and the State-owned facilities at San Francisco do not come within the jurisdiction of this Commission, the officials of these publicly owned properties have worked very closely with and cooperated with the Commission's representatives in every respect to make possible this comprehensive study of the marine terminal situation in the San Francisco Bay area.

It is planned to introduce this study as an exhibit at the hearing to be held in San Francisco on May 20, 1936, before President Harris.

The study and report has been prepared by Dr. Ford K. Edwards, Transportation Economist, and T. G. Differding, Assistant Engineer; and, in so far as I have been able to ascertain, represents one of the most exhaustive studies that has been undertaken on this general subject and it should be helpful in the determination of this and similar problems coming before the Commission in the future.

Respectfully submitted, J. G. Hunter, Transportation Engineer.

[fol. 2117] San Francisco, California,

May 16, 1936.

Case No. 4090

Mr. J. G. Hunter, Transportation Engineer, Building.

Pursuant to your instructions, we are presenting herewith a final report in Case No. 4090, setting forth our recommendations in the matter of the marine terminal problems in the San Francisco Bay area.

We find that three principal problems face the industry. The first is the inadequacy of existing revenues. The second is the diversion of tonnage from one port to another through the device of absorptions. The third is the discrimination between the various users of terminal services, some bearing an unduly low proportion of the costs.

The deficits have arisen principally from sharp increases in labor costs and from rate reductions arising from the competition between the various public and private port terminal bodies.

A complete analysis was made of the operating costs of each phase of marine terminal activity at each of the private terminals, which in turn necessitated a study of the proper and reasonable division of terminal costs between the vessel and the cargo.

The rates recommended herein are based upon a consideration of three factors:

1. The cost of providing the service.
2. The ability of the cargo or the vessel to pay.
3. The competitive conditions.

The construction and economic characteristics of each terminal rate and charge are set forth in full detail throughout the report and summarized in Part III, Chapter IV.

In addition, other terminal problems such as absorptions, leases and rentals, free time periods, etc., have been treated and recommendations provided for their solution.

[fol. 2118] The recommendations herein, if adopted, should, we believe, place the marine terminal industry upon a fair and proper basis and provide it with a reasonable return.

The figures used for land values in the case of the Encinal Terminals and the Howard Terminal were furnished by

E. P. McAuliffe of the Valuation Division. Acknowledgment is also made of assistance furnished by W. C. Fankhauser, Financial Expert of the Commission.

Your attention is called to the fact that the major portion of the total dock facilities in the San Francisco Bay area is controlled by State or Municipal bodies and hence is not subject to the Commission's jurisdiction. Any changes in the present rates, rules and practices of the private terminals can only be made, therefore, with the full cooperation of these bodies. They have, however, expressed their great interest in this investigation and have offered very valuable assistance at every stage of the study.

It is desirable to express appreciation to the various terminal operators, public port bodies, shipper representatives and steamship lines for their full cooperation.

Respectfully submitted, Ford K. Edwards, Transportation Economist. T. G. Differding, Assistant Engineer.

[fol. 2119] PART I

Conclusions as to Rates, Rules and Regulations

[fol. 2120] Chapter I

Statement of the General Problem:

The marine terminal operator, or wharfinger, stands at the point of interchange between inland and ocean transportation. His revenues accrue from two principal sources, viz, charges against the cargo and against the ship; and since he provides an indispensable facility which represents not only a large investment but one costly to maintain and operate, he is entitled to a fair and adequate remuneration for such.

However, the conflicting views of shippers and carriers as to their respective responsibilities toward the wharfinger, as well as early competitive practices grown respectable with age, have resulted in port charges and practices varying widely from port to port and from terminal to terminal within the same port.

The complexity of the industry is indicated by the Federal Coordinator of Transportation in his report to Congress upon Transportation Legislation (74th Congress, 1st Session—House Document No. 89, pp. 56-57). He states,

"The diversity of interests represented by those engaged in furnishing wharfinger service is so great and the practices which have developed in the industry are so lacking in uniformity as to promote widespread discrimination between those using or desiring to use such services. The industry is suffering from over-expansion of facilities and destructive competition, causing chronically low earnings."

Upon inquiry into the reasons for the existing rates and charges, it became apparent that the reasonable cost of [fol. 2121] rendering the respective services has been of minor consideration and the wharfinger, in seeking a source of revenue, has placed the charges on the basis of what he could get and where he could get it. The bargaining power of the respective parties has been a not inconsiderable factor. Rates have never been "scientifically" constructed, no matter how loosely this term may be used. In fact, the wharfinger or marine terminal business appears to have been a neglected part of the transportation system as no set of guiding principles covering rates, rules or practices appear to have been laid down or recognized.

No record could be found of any cost analysis used to develop and substantiate the existing rates, with the exception of some cost studies developed to show the inadequacy of existing wharf demurrage and car unloading charges. The statement of one operator that the rates, as far as he knew, were originally "picked out of the air and then revised where the shoe pinched too tightly or to meet competition" may be the answer. Probably from the terminal's standpoint this method sufficed as well as any, provided the gross revenue covered the costs of operation and provided some profit.

Apparently this rate procedure has reached the end of its usefulness. The constant development of new private and public terminals with a consequent diversion of tonnage from older operators and ports, the general effect of the "depression," the continual whittling of the rate level, the offer of gratuitous services under stress of competition, the movement of cargo by truck instead of by rail with conse- [fol. 2122] quent loss in car loading and unloading revenues, direct strike costs, and the increase in wages of labor coupled with a decreased labor efficiency have all contributed to the existing situation wherein the present rates provide insufficient revenues. As one operator remarked, "It is

like eating soup with a fork. We work hard enough, but don't seem to be getting anywhere.".

The series of interviews held with all operators of terminals developed the fact that the existing charges for the many types of services rendered were established on the trial and error basis. Every existing tariff charge of any significance was questioned as to its reasonableness by one or more terminal operators, carriers or shippers. The terminal operators generally expressed the view that the charges for each service should be proper in themselves and expressed the desire that a fair basis of charges for the account of the cargo and the carriers, respectively, be determined and applied.

The first step in this direction was the segregation of those services and costs rendered for the account of the vessel from those rendered for the account of the cargo.

The second step was (1) the breakdown of the vessel costs into those applicable to dockage, handling lines, sale of water and those miscellaneous cargo services embraced in the service charge item; and (2) the breakdown of the cargo costs into toll, wharf demurrage, car loading and unloading, pool car assembling, stencilling, weighing, strapping, etc., etc.

We find that three factors govern the determination of the rates in the instant case where the product consists, [fol. 2123] not of a commodity, but of a service. They are, (1) the cost of providing the service, (2) the ability of the traffic to pay, and (3) competition. A few explanatory remarks regarding each of these is desirable.

(1) *Cost of providing the service:*

This factor was measured by an exhaustive breakdown of all expenditures with each expense allocated to the tariff service in the performance of which the expenditure was incurred. (See Part III, Chapter I, of this report for details.)

(2) *Ability of the consumer to pay:*

One of the authors of this report, while standing before the fruit stand in the waiting room of the San Francisco Ferry Building, overheard the following conversation between a potential customer and the fruit vendor:

Customer: (Waving to a display of fancy dried fruits)—"What do you want for this stuff?"

Vendor: "Well—what can you afford to eat it at?"

This, we believe, properly introduces the second rate-making factor of "ability to pay."

It is somewhat similar to but not identical with the concepts of "value of the service to the consumer," and "willingness to pay." A fourth and parallel factor, "charging what the traffic will bear," is also a proper rate-making principle when properly interpreted, but since it has often been erroneously applied in the sense of "get all you can the easiest way you can," it has fallen into some disrepute. For purposes of convenience and clarity of intention, the authors shall use hereafter the term "ability to pay." (See [fol. 2124] Part III, Chapters II and III, of this report for data on ability to pay.)

This the authors have endeavored to measure through checking the sales prices of various commodities in the past several years with the conviction that if the selling price of a commodity has fluctuated $1, $10 or $20 per ton, an increase in the toll charge of ten cents per ton is within the ability of the buyer or seller to pay.

It has also been measured through checking waterborne tonnage records before and after the vessels have imposed rate increases or assessed handling charges.

The best indication as to whether cargo can stand a reasonable and compensatory rate is to assess that rate and see what happens. The steamship lines have provided this so-called laboratory test, the results of which are contained elsewhere in this report.

The authors have endeavored to measure the relative ability of the vessels to pay by noting their rate increases, their assessment of new handling charges, their increase in tonnage, and their profit and loss statements.

(3) *Competition:*

This factor is akin to Sinbad's Old Man of the Sea. It cannot be shaken, ignored or forgotten. Among the public and private port bodies, where rugged individualism still prevails and harmony is the exception rather than the rule, this factor of competition is a powerful weapon in the hands of an astute shipper. Where there exist no clearance house for an exchange of ideas or even a knowledge of what the

[fol. 2125] other port body is doing, one good rumour started by a shipper may drive demurrage rates on some commodity down 20 per cent overnight. Furthermore, under the present conditions, the wharfingers will lower their rates this 20 per cent rather than verify the rumour. The final result of such a system is here in evidence.

It is well at this time to add a further comment. Five private terminals and three public-port bodies are in more or less bitter competition for vessels and tons in the San Francisco Bay area. The Commission has jurisdiction over the former but not over the latter, although they are co-operating and aiding in this study. Under such circumstances and in fairness to the private terminals, it is recommended that rates ordered for the private terminals be no higher than those which the public bodies in the same competitive position may find desirable to adopt. This, frankly, sets the ceiling.

Before leaving the subject of competition, the following incident should be mentioned. A very large shipper recently approached a small port (located adjacent to a big port), and stated that if the small port would refuse to join in a proposed increase in toll charges at the big port, and would maintain a given differential, all this shipper's tonnage would flow to the little port. Whereupon the little port pointed out three things: First, that it had always had and still had the given differential; secondly, that it had actively solicited this shipper's own plant for tonnage; and, thirdly, that to date it had not received a pound. Whereupon both parties did the only polite thing under the circumstances—they laughed and dropped [fol. 2126] the subject. The moral to this story is not that shippers are uninterested in five cents or ten cents a ton, but that many factors, aside from tolls, govern competitive routing and that one must know fully the facts before being swayed. It also illustrates what a potentially powerful weapon competition may become in an industry having no unanimity of action among its members.

[fol. 2127] Chapter IV

Dockage Charges:

Dockage is the charge assessed against the vessel for docking at a wharf, pier or seawall structure, or coming within a slip, channel, basin or canal.

This definition differs from the definitions now in effect in that it substitutes the word "docking" for "berthing." The former word has a broader connotation than the latter and is more in accordance with the intent of the tariffs. Furthermore, in the tariffs themselves, the word "berthing" is dropped and the terms "docking," "dockage" and "docked" used wherever the service implies the use of wharf space.

Inasmuch as the terms in the earliest tariffs were loosely drawn and later operators adopted without question the language from such early tariffs that happened to come to hand, it does not appear as out of order at this time to require the language to conform to the thought which the authors believe it is intended to convey. This expression of intent, as described in the previous two chapters, is interpreted as embracing wharf areas up to but not including point of rest.

Applying these dockage principles to the cost studies, there has been obtained for each privately owned terminal an annual sum which represents the cost to that terminal of providing for the vessel the following facilities:

1. Water areas—basins, slips, etc.:

Embraces dredging and the interest and taxes upon the investment in the privately owned land so devoted to wharf- [fol. 2128] inger purposes. (Does not embrace any areas beyond the pier head lines nor any areas more than 75 feet out from a quay wall structure, as explained in Chapter III.)

2. 60 per cent of the apron structure, up to a 35-foot width as maximum. (Embraces maintenance, depreciation, return and taxes.)

3. From 85 per cent to 87½ per cent of the land upon which the apron structure rests. (Embraces return and taxes.)

4. 50 per cent of the aisle spaces in the transit shed used by vessel's agents, after deducting all aisles chargeable to demurrage, storage, warehousing, leased areas, etc.

The dockage charges at the East Bay privately owned terminals constitute between 25 per cent and 30 per cent of the total costs of providing the marine terminal plant facili-

ties. (The balance is chargeable to tolls and to demurrage.)

The authors at this point wish to call attention to the fact that the dock facilities at the two largest East Bay private terminals are used by the vessels to a degree of effectiveness that approaches maximum capacity.

The following statistics are offered in support of this:

	Minimum and Maximum Range
Percentage of berth occupancy for 12 working hours of the day, excluding Sundays and holidays	100% to 110%
Percentage of berth occupancy for 24 hours of the day, 365 days in the year	42% to 45%

It is desirable to point out that the costs and proposed [fol. 2129] rates shown herein are predicated upon an effectiveness of plant use equal to that indicated above. Where the efficiency in the use of the plant was found to be much less than that indicated above, the costs per vessel and/or per ton rose rapidly, or indeed skyrocketed.

Turning now to the question of dockage charges, the immediate problem becomes that of taking the annual lump sum cost chargeable to dockage and spreading it, in some manner or other, over the year's volume of traffic. This is where the authors' troubles began and they found themselves sorely in need of an Aladdin's Lamp to derive a basis of charges which would satisfy their desire to apply proper rate-making principles and yet not divert vessels to one or other side of the Bay. Public port authorities, private port authorities, and steamship executives were fully and frequently contacted and every source of experience, judgment and assistance given serious consideration.

The following factors had to be weighed:

1. The dockage charges, on the basis of the tons loaded and discharged, range between 9 cents and 11 cents per ton, with the average at 10 cents.

2. The dockage costs spread over the gross registered tonnage of the vessels calling over a year's period at each of the East Bay private terminals would range from 0.675 cents to 1.054 cents, and average 0.865 cents per ton.

[fol. 2130] 3. The dockage costs spread over the net registered tonnage would range from 1.093 cents to 1.710 cents and average 1.402 cents.

4. The concept of dockage at the East Bay (as outlined in Part I, Chapter II), varies from the concept of dockage at San Francisco. At the former the vessels pay no monthly rentals for working spaces utilized and the dockage charge should therefore embrace such. At the latter the vessels pay a monthly rental of from 0.6 cents to 1.2 cents per square foot per month and while this is viewed as a privilege charge, yet the funds so derived may contribute in whole or in part toward the cost of the previously described working areas which have been charged to the vessel. At least an examination of the cost data and tonnage records of representative steamship operations having pier assignments at San Francisco indicate such could be the case. In other words, the San Francisco concept of dockage apparently embraces merely the use of the slip areas up to and including the fender lines and sufficient apron space to tie up to, but no working areas beyond that; and, considering the fact that a rental is paid, this appears proper. The present scale of dockage charges at San Francisco, if placed on a per cargo ton basis at representative steamship piers and compared with the cost data found at the East Bay terminals, could be considered for the purposes in hand to compensate for the working areas used by the vessel on the apron and in the sheds.

[fol. 2131] 5. A dockage charge on the basis of the tons loaded and discharged does not adequately reflect the following:

(a) Cost of providing water (slip and basin) areas and fender lines.

(b) The quickness or slowness with which a vessel may be loaded or discharged.

(c) The cost of providing facilities to which a vessel may tie up overnight, Sundays, while taking on stores and supplies, or while otherwise lying idle.

(d) The cost of providing facilities to the vessel that serves in part or in whole passengers only, and where tonnage is a small or insignificant factor. (The East Bay terminals do not serve passenger vessels.)

6. The dockage charge based upon the gross or net registered tons of the vessel or upon the size of the vessel does not fully reflect the cost of providing working areas utilized by the vessel in loading or discharging cargo.

7. A uniform dockage charge based wholly upon the size of the vessel (gross or net registered tons), would either fall short of the necessary revenues at certain terminals or overshoot it at others due solely to the difference in the number of tons of cargo received or discharged at each of the different terminals. A check for a year's period was made of each vessel calling at each of the private terminals. A record was taken of the gross and net registered tonnage of the vessels, the tons loaded and discharged and the hours and minutes of berth occupancy. This study disclosed that [fol. 2132] the average tons loaded or discharged varies widely between the terminals. For every 100,000 tons of cargo discharged or loaded, many more vessels call at one terminal than at another although the vessels may be of the same average size.

8. Neither the cargo tonnage basis nor the gross or net registered tonnage basis reflects adequately the situation where a vessel desires for its own purposes the exclusive or semi-exclusive use of a facility for the benefit of its vessels and its organization (as at San Francisco).

9. The vessels calling at East Bay terminals remain for periods ranging from thirty minutes to four days. Eighteen per cent stay less than four hours. The majority (56 per cent) stay less than ten hours. The classification of vessels according to hours of stay is as follows:

	Per Cent
Vessels occupying berth 4 hours or less	18.3
" " " over 4 to 6 hours	21.3
" " " over 6 to 8 hours	9.1
" " " over 8 to 10 hours	7.3
" " " over 10 to 12 hours	5.7
" " " 12 hours or under	62.0
" " " over 12 to 24 hours	27.0
" " " 24 hours or under	89.0

In view of the fact that as many as three vessels may use each berth in a working day, the twenty-four hour dockage basis could not physically be applied. If any appreciable number of the vessels occupied the berths for the full time on a twenty-four hour rate, the terminals could not function.

[fol. 2133] 10. No attempt is here made to change, alter or artificially influence the present flow of vessels and tonnage through the various ports upon San Francisco Bay.

11. At the present time approximately 75 per cent of what should constitute a compensatory dockage charge is embraced in the present service charges at the East Bay terminals.

12. The remaining 25 per cent is approximately equal to the revenues which would be derived if the present system of dockage charges at San Francisco were applied with the following exceptions:

(a) That half dockage be applied on Coastwise vessels, both while loading and discharging, instead of upon vessels loading only. A consideration of (1) cost, (2) ability to pay, and (3) competition do not warrant such differentiation at East Bay terminals.

(b) That the time be broken down into four-hour periods.

Upon a review and analysis of all the above factors, the authors of this report conclude as follows:

I. That the present dockage charges now contained in the service charges should be left there. It provides compensation for space used and may be considered analogous to the rental charges at San Francisco.

II. That the remaining dockage costs be assessed upon approximately the same basis as at San Francisco, but with the day broken down into four-hour units.

[fol. 2134] In accordance with these conclusions, the following dockage charges, rules and regulations are recommended:

Item
No.

1. Definition of Dockage Charges:
   The charge assessed against a vessel and/or watercraft for docking at a wharf, pier or seawall structure, or moored to a vessel so docked, or coming within a slip, channel, basin or canal.

2. Basis for Charges:
   Ocean-going vessels shall have dockage assessed based upon net registered tonnage. Other than ocean-

going vessels and all watercraft engaged in inland waterway trade, except lighters, shall have dockage assessed based upon under-deck tonnage measurement. ~~(See Item No. 5 for rates on lighters.)~~

3. Charges on Vessels Engaged in Inland Waterway Trade:

(a) Full Dockage Rate:

Vessels, other than lighters, engaged in inland waterway trade will be charged full dockage rate of 2 cents per ton per day of 24 hours or part thereof, for the first 200 net registered tonnage, or under-deck tonnage measurement of the vessel, as provided for in Item No. 2, and ¾ cents for each additional ton when occupied as specified below:

1. Vessel docking at a wharf and discharging or taking on passengers and baggage.

2. Vessels that are engaged in towing.

3. Vessels engaged in carrying passengers only.

4. Vessels carrying neither freight nor passengers.

(b) Half Dockage Rate:

Vessels, other than lighters, engaged in inland waterway trade will be charged half dockage rate of 1 cent per ton per day of 24 hours or part thereof, for the first 200 net registered tonnage, or under-deck tonnage measurement of the vessel, as provided for in Item No. 2, and ⅜ cents for each additional ton when occupied as specified below:

[fol. 2135] 1. Vessel docking at a wharf discharging and/or loading cargo.

2. Vessel docking at a wharf and taking on stores, supplies, bunkering fuel, watering, fumigating, or undergoing repairs.

~~3. Vessel docking at a wharf while lying idle.~~

4. Vessel while receiving or discharging ballast, or receiving stiffening.

5. Vessel while lying outside of a vessel at a wharf (outside berth), discharging, loading or lying idle.

4. Charges on Vessels Engaged in Coastwise or Offshore Trades:

(a) Except as otherwise provided, dockage shall be charged on vessels in Coastwise and offshore trades, as follows:

Dockage Rates

Net Registered Tons	Rate for 24-hour day
From 10 to 250 inc.	$2 25
" 251 to 500 "	4 50
" 501 to 1,000 "	6 00
" 1,001 to 1,500 "	7 50
" 1,501 to 2,000 "	9 00
" 2,001 to 2,500 "	12 00
" 2,501 to 3,000 "	15 00
" 3,001 to 4,000 "	18 00
" 4,001 to 5,000 "	21 00
" 5,001 to 6,000 "	24 00
" 6,001 to 7,000 "	27 00
" 7,001 to 8,000 "	30 00
" 8,001 to 9,000 "	33 00
" 9,001 to 10,000 "	36 00

(b) Vessels of over 10,000 net registered tons shall be charged dockage in addition to the above charge of $36.00 at the rate of $3.00 per day for each additional 1,000 net registered tons or fraction thereof. In computing dockage charges in all cases, sixths of days only shall be considered and charged for, in the manner as follows, to-wit:

[fol. 2136] 1. Four hours or less shall be charged one-sixth of one day's dockage.

2. Over four and not more than eight hours shall be charge two-sixths of one day's dockage.

3. Over eight and not more than twelve hours shall be charged three-sixths of one day's dockage.

4. Over twelve and not more than sixteen hours shall be charged four-sixths of one day's dockage.

5. Over sixteen and not more than twenty hours shall be charged five-sixths of one day's dockage.

6. Over twenty and not more than twenty-four hours shall be charged one day's dockage.

(c) No charge for dockage under this item shall be less than Two Dollars ($2.00) in any case.

5. Charges on Lighters:

(a) Lighter dockage rate is 1 cent per ton net tonnage per day of 24 hours or part thereof.

(b) A lighter is understood to be a vessel which has neither power nor steering equipment; however, watercraft engaged exclusively in stevedoring, rigging or hoisting will be granted lighter rates.

6. Rates When a Vessel Changes Position:

Where a vessel changes her status whereby she is entitled to a different dockage rate, the dockage rate in effect at the time the changed status takes place shall continue to be charged until the expiration of the time period during which such change takes effect and subsequent time shall be charged at the changed rate.

7. When Dockage Commences:

Dockage shall commence upon a vessel when making fast to a wharf, pier or seawall structure, or moored to a vessel so berthed, or coming within a slip, channel, basin or canal, and shall continue until such vessel is completely freed from and has vacated the berth.

No deductions shall be made for Sundays, holidays, or on account of weather conditions.

[fol. 2137] 8. Per Diem Dockage Multiple:

When per diem dockage of a vessel is not a multiple of five, it must be reduced or increased, as the case may be, to the nearest such multiple; provided, that if it be equally near to two such multiples, it must be increased to the first such multiple above.

9. Vessels Shifting, Moving and Returning During Dockage Period:

(a) When a vessel of any kind is charged dockage at a wharf for a full day of 24-hours, she may use the same or any other wharf operated by this (*name of wharfinger*) during that day without further charge, no matter how often she may leave and return.

(b) When a vessel is shifted directly from one wharf to another wharf, and dockage is charged for on a period of sixths of days, the total time at such berths will be considered together in computing the dockage charge.

[fol. 2138]

Proposed Basis for Dockage Charges at East Bay Terminals for All Ocean-Going Vessels Loading or Discharging Cargo

Net Registered Tons of Vessel	Rate For 24 Hours	Four Hours or less	over 4 Hours and not more than 8 Hours	Over 8 Hours and not more than 12 Hours
20 to 500	$4.50	$2.00	$2.00	$2.25
501 to 1,000	6.00	2.00	2.00	3.00
1,001 to 1,500	7.50	2.00	2.50	3.75
1,501 to 2,000	9.00	2.00	3.00	4.50
2,001 to 2,500	12.00	2.00	4.00	6.00
2,501 to 3,000	15.00	2.50	5.00	7.50
3,001 to 4,000	18.00	3.00	6.00	9.00
4,001 to 5,000	21.00	3.50	7.00	10.50
5,001 to 6,000	24.00	4.00	8.00	12.00
6,001 to 7,000	27.00	4.50	9.00	13.50
7,001 to 8,000	30.00	5.00	10.00	15.00
8,001 to 9,000	33.00	5.50	11.00	16.50
9,001 to 10,000	36.00	6.00	12.00	18.00

Net Registered Tons of Vessel	Over 12 Hours and not more than 16 hours	Over 16 Hours and not more than 20 hours	Over 20 Hours and not more than 24 hours
20 to 500	$3.00	$3.75	$4.50
500 to 1,000	4.00	5.00	6.00
1,001 to 1,500	5.00	6.25	7.50
1,501 to 2,000	6.00	7.50	9.00
2,001 to 2,500	8.00	10.00	12.00
2,501 to 3,000	10.00	12.50	15.00
3,001 to 4,000	12.00	15.00	18.00
4,001 to 5,000	14.00	17.50	21.00
5,001 to 6,000	16.00	20.00	24.00
6,001 to 7,000	18.00	22.50	27.00
7,001 to 8,000	20.00	25.00	30.00
8,001 to 9,000	22.00	27.50	33.00
9,001 to 10,000	24.00	30.00	36.00

Minimum dockage charge shall not be less than $2.00.

For purposes of comparison we have shown on the following page present half dockage rate charges in effect at the San Francisco piers and terminals. Rates are based upon the actual net registered tonnage measurement of the vessel at San Francisco instead of group rating as above.

[fol. 2139]

Present Half Dockage Charges at San Francisco Piers and Terminals

Note: The term "ton" means the net registered tonnage of vessel.

Tons	Charge	Tons	Charge	Tons	Charge	Tons	Charge
200	$2.00	300	$2.40	400	$2.75	500	$3.15
600	3.50	700	3.90	800	4.25	900	4.65
1,000	5.00	1,100	5.40	1,200	5.75	1,300	6.15
1,400	6.50	1,500	6.90	1,600	7.25	1,700	7.65
1,800	8.00	1,900	8.40	2,000	8.75	2,100	9.15
2,200	9.50	2,300	9.90	2,400	10.25	2,500	10.65
2,600	11.00	2,700	11.40	2,800	11.75	2,900	12.15
3,000	12.50	3,200	13.25	3,400	14.00	3,600	14.75
3,800	15.50	4,000	16.25	4,200	17.00	4,400	17.75
4,600	18.50	4,800	19.25	5,000	20.00	5,200	20.75
5,400	21.50	5,600	22.25	5,800	23.00	6,000	23.75
6,200	24.50	6,400	25.25	6,600	26.00	6,800	26.75
7,000	27.50	7,200	28.25	7,400	29.00	7,600	29.75
7,800	30.50	8,000	31.25	8,200	32.00	8,400	32.75
8,600	33.50	8,800	34.25	9,000	35.00	9,200	35.75
9,400	36.50	9,600	37.25	9,800	38.00	10,000	38.75

The San Francisco half dockage rate is 1 cent per ton per day of 24 hours, or part thereof, for the first 200 net registered tonnage and ⅜ cents for each additional ton. Such half dockage rate applies on all offshore vessels loading or discharging at assigned piers and terminals; and coastwise vessels (1) arriving with no cargo on board docking at any wharf and loading cargo, or (2) arriving with cargo on board docking at any wharf and loading cargo in excess of 1/5 the net registered tonnage of such vessel. Full dockage rate, which is 100 per cent greater than the half dockage rate, applies on coastwise vessels discharging cargo or when arriving with cargo on board and loading additional cargo in amounts less than 1/5 the net registered tonnage of such vessel.

[fol. 2140] The above treatment of dockage has been from a "cost of providing the service" standpoint; but now a second question arises—Is this increase, averaging between two cents and three cents per ton, within the ability of the steamship lines to pay? The authors believe that it is.

While the subject of the vessel's ability to pay is treated more fully in Part III, Chapter III, the following items are to be noted. The Intercoastal lines, effective October 3, 1935, enjoyed increases averaging approximately $1.00 per ton. The European lines enjoyed a similar increase in many items. The Offshore lines, since the first of the year have assessed a forty-cent handling charge on all items not received at ship's tackle. Most trades have enjoyed increases in tonnage. It is true, at the same time, that vessel costs have increased greatly, particularly on their shore operations. Nevertheless, it is believed, after consideration of the above items, that the increases here proposed are within the ability of the vessel to pay.

A third rate factor—competition—must be considered. The rates proposed herein will tend to place San Francisco and the East Bay in a more equally competitive position than has heretofore existed. It places the dockage charges on a more nearly comparable basis at all Bay terminals and piers.

[fol. 2141] Chapter V

Tolls:

Tolls is the charge for cargo conveyed on, over, or through a terminal facility, or loaded or discharged while

the vessel is berthed at a terminal facility. It is a charge against the cargo although in practice it is assessed against and collected from the steamship companies who, in turn, collect it from the shipper or consignee. The charge for tolls at present is five cents per ton on Coastwise and Inland Waterway cargo and fifteen cents per ton in all other trades. In addition a limited number of specific commodity rates are quoted in all trades.

The authors of this report are acting upon the premise that the toll is the cargo's payment to the wharfinger for facilities used and that the charge should be commensurate with the cost of furnishing such facilities. The specific costs embraced in the toll charge are enumerated in Part I, Chapter III, of this report.

The cost of providing the necessary dock, shed, track, roadway and land facilities used by the cargo averages between twenty-one cents and twenty-two cents per total ton handled. The present average toll revenues approximates eleven cents per ton.

This total tonnage, however, at present embraces the following cargoes:

[fol. 2142]

Commodity	*Present Toll* (Rate per 2,000 pounds)
Bulk cargo, handled direct between the vessel and car, as named in present tariffs	5¢ Coastwise Trade 10¢ Offshore Trade
General Merchandise Cargo	5¢ Coastwise Trade 15¢ Offshore Trade

The practical problem thus becomes that of breaking down an average overall cost of from twenty-one cents to twenty-two cents per ton into the various classes of commodities indicated above. The factors to be considered in such a breakdown are the following:

1. *Cost of providing the service:*

Certain of the above commodities on an inbound movement are handled across the apron into the transit sheds and from there are subsequently loaded to rail cars or to the consignee's trucks. Such tonnage makes full use of the cargo facilities.

Other commodities, such as bulk sand, clay and chalk, etc., are discharged directly to rail cars on the apron and

never enter the transit sheds. To determine the facility costs upon such direct handled tonnage, the following costs are to be used:

(a) 40% of all apron costs up to 35 feet width and 100 per cent of all apron costs beyond this. This embraces all apron construction which is solely for the benefit of direct loading to rail cars.

(b) Approximately 15 per cent of the total carrying charges on land under the aprons.

[fol. 2143] (c) A portion of the total costs on lead tracks used in reaching both apron high line tracks and shed depressed tracks. The costs are prorated on a tonnage basis.

(d) All additional lands and facilities whose use is peculiar to the direct loading of cars.

(e) A portion of the office and management supervisorial costs chargeable to toll and prorated between direct loaded cargo and shed cargo on a tonnage basis.

The toll charges on such cargo would naturally vary with the number of tons handled. If the tonnage loaded directly to cars sharply increased, the fixed trackage and apron costs per ton would fall. If such tonnage declined, the costs per ton would rise. Hence, in determining relative costs, the volume of tonnage moving is significant.

At the general cargo facilities of the three privately operated terminals between 25 per cent and 30 per cent of all tonnage was handled directly to cars during 1935. At no one terminal did the percentage differ from this 25 per cent to 30 per cent value. (Note: liquids handled entirely through pipe lines are here excluded from consideration.)

The authors of this report find that upon the use of the above proportion of direct-loaded tonnage to total tonnage, the facility costs average between seventeen cents and eighteen cents per ton. Taking all remaining facility costs and dividing them by the remaining tonnage enjoying the use of the transit sheds, the toll charge averages between twenty-two cents and twenty-three cents per ton.

[fol. 2144] 2. *Ability to pay:*

(See Part III, Chapter III, for the general treatment upon the subject of the cargo's ability to pay.)

The factor of ability to pay wields a strong influence in the determination of toll charges.

(a) Consider first the Coastwise and Offshore Trades: Today the toll charges are five cents and fifteen cents per ton respectively on general cargo. The reason for this differential had nothing to do with the cost of serving the two trades. It arose solely from an application of "what the traffic will bear" factor. (See Page 19 of Preliminary Report).

Regardless of the reason for the original five cents toll, there can be no doubt but that under the present highly competitive and disruptive conditions, Coastwise carriers and the cargoes have adjusted themselves to the five-cent charge; and, whereas a ten-cent increase up to a 15-cent toll is felt justified, an additional increase to 25 cents, even though desirable from a cost standpoint, may well be more than the traffic can bear.

Certainly the service is worth no more to the shipper than the cost of an equivalent transportation service by rail or truck and as the charges at the present moment via all three methods of transportation are in somewhat of a balance, the authors of this report hesitate to recommend too abrupt a change.

Furthermore, the hauls are short with the rates low and a ten-cent or twenty-cent increase per ton bulks larger to the shipper than in the instance of Intercoastal or Foreign [fol. 2145] movements.

There is the further factor, to be mentioned from a cost standpoint, that only five days' free time is recommended (See Part II, Chapter VII), for the Coastwise and Inland Waterway trades as compared with seven days for the Offshore trades. Hence the former trades receive as a maximum approximately thirty per cent less time use of the transit sheds than the latter. The above factors, in the minds of the authors of this report, justify the maintenance of a ten-cent spread between the Coastwise (and Inland Waterway) trades on the one hand and the Offshore trades on the other.

(b) Concerning the ability of all tonnage to bear a horizontal ten-cent per ton increase: It is believed that where the total charge for a service is but a relatively small percentage of the selling price of that commodity, the factor of cost of providing the service becomes of greater significance relative to "ability to pay" than in those instances

where the charge for the service forms a major part of the selling price.

This situation holds true in the instance at hand where the proposed ten-cent per ton increase is but one-tenth of one per cent of the selling price, f.o.b. dock of many types of cargo, such as canned goods, averaging $100 per ton.

The ten cents per ton constitutes but one-quarter of one per cent of the selling price of such bulk commodities as ammonia phosphate ($40 per ton), nitrate of soda ($35 per ton), copra ($40 per ton), etc. It constitutes but 1.7 [fol. 2146] per cent of the sales price of such very low grade commodities as Belgium silica sand ($6.00 per ton). (See Part III, Chapter III, for price data and further discussions). The prices quoted above are average 1936 prices, f.o.b. the docks on San Francisco Bay.

The authors are concerned, however, not only with the ratio of the ten-cent toll increase to the 1936 prices, but as to whether the increase will prove disruptive to any industry, whether a seller or a buyer. Silica sand, for example, has in the past two years fluctuated as much as $1.00 per ton (upward). If the consumers can successfully withstand such increases or such fluctuations, ten cents per ton should not be beyond the ability of the consumer (or buyer) to pay. In the past three or four years the price on wrapping paper has increased more than $5.00 per ton; sesame seed, $5.00 per ton; copper ingots over $60.00 per ton; dried peaches (choice) over $50.00 per ton; and canned fruits from $5.00 to $6.00 per ton.

On the other hand, it must be noted that some products have declined in price in the past few years. Sulphate of potash prices dropped from approximately $47.50 per ton to nearly $33.00 per ton between 1932 and 1935. Dried raisins (Thompson Fancy), dropped from $105.00 per ton to $95.00 per ton between 1934 and 1935. Domestic newsprint dropped from approximately $50.00 per ton to nearly $40.00 per ton between 1932 and 1935.

The belief that the cargo can stand the toll increases herein proposed is not and cannot be based merely upon past or expected price increases. It is realized that tolls [fol. 2147] constitute probably the most inflexible of rates. The five-cent toll in San Francisco Bay has not been changed in the last sixty years. This is not because five cents per ton is a compensatory rate, but because in the past it has been easier to raise revenue by assessing other

services, and because it is difficult for a large group of public and private bodies to act in unison.

If the toll charges proposed herein are adopted, it is to be expected that they may have to weather several "ups" and "downs" in prices during the periods to come; but the authors feel that after viewing the recent price fluctuations, a ten-cent per ton toll increase will not overtax any cargo's ability to pay.

The final or "acid" test, of course, of ability to pay is to put the charges into effect and see what happens. Such a test has been provided in good measure by the steamship lines. In October, 1935, the Intercoastal lines put into effect rate increases averaging about $1.00 per ton. A check of the tonnage so affected (taken from Los Angeles Harbor Department records—See Part III, Chapter III, of this report), has been made for the three months prior to that increase and for the corresponding period a year later. Some tonnage increased and some tonnage decreased and, of course, other factors had their influence; but there is no apparent correlation between the rate increase and tonnage fluctuations.

Another test has been provided in the Foreign trades by the assessing of the forty-cent per ton handling charge [fol. 2148] effective since the first of this year. Although it has been in effect only a short period, there is no indication of it having discouraged cargo.

To sum up, it is the conclusion of the authors, after consideration of the above facts, that the increases proposed herein are within the ability of the cargo to pay.

3. *Competition:*

A third factor is that of competition. Each of the San Francisco Bay port areas and terminals is in bitter competition with the others for tonnage. The whole area is likewise in competition with the ports to the south and the ports to the north on certain hinterland traffic and on transcontinental import and export traffic.

Competition is potentially effective on certain bulk commodities where an increase in toll charges may drive traffic to the rails or to the trucks. Its influence is felt in the Coastwise and Inland Waterway trades and this, with other factors, explains the lower toll proposed in these trades than in the Offshore trades.

Upon a consideration of all the above outlined rate factors, the authors of this report recommend that the following scale of toll charges be adopted:

(1) Coastwise and Inland Waterway Trade (All cargo) ..... 15¢ per 2,000 lbs.

(2) Offshore Trade (General Merchandise Cargo) 25¢ per 2,000 lbs.

(3) Offshore Trade (Bulk cargo, handled direct between the vessel and car as named in present tariffs ..... 20¢ per 2,000 lbs.

[fol. 2149] The average of the above rates, weighted by the tons moving in each of the classification-, approximates very closely the cost of providing the service.

It is further recommended that the full toll should apply on barged cargo. The cost to the terminal is there, regardless of whether the vessel calls directly or a barge picks it up.

It is further recommended that any cargo removed from the possession of the terminal while awaiting trans-shipment shall pay a second toll.

[fol. 2150] Chapter VI

Service Charges:

The service charge in effect at the East Bay terminals and at the San Francisco Terminal and State Terminal, Ltd., in San Francisco, is a charge assessed against the vessel for one or more of the following services rendered:

1. Arranging berth for vessel.
2. Arranging cargo space on wharf.
3. Checking cargo to or from vessel as required.
4. Receiving outbound cargo from shipper.
5. Delivering inbound cargo to consignee.
6. Preparing manifest or tags covering cargo loaded aboard vessel.
7. Preparing "over," "short" and "damage" reports.
8. Ordering cars.
9. Giving information to shippers and consignees regarding cargo, sailing and arrival dates of vessels.
10. Lighting wharf.

These services do not include any labor for handling cargo. The present rates range from 25 cents to 50 cents per ton in the various steamship trades with the major portion, except bulk cargo, moving outbound in the Intercoastal and Foreign trades under a charge of 40 cents. The inbound charges in these two trades is 50 cents. On bulk cargo handled direct from ship to car or vice versa, the charge ranges from 10 cents to 15 cents per ton with the greater portion handled at the ten-cent rate.

It was stated in the preliminary report that an approach to the service charge question required resort to cost accounting in order that the propriety of the charges be checked. Hence the first approach to the problem is from [fol. 2151] the standpoint of cost. This has been done and there follows herewith such cost data as are required to substantiate recommendations that follow.

A check of the over-all average cost of performing the services at each of the five private terminals may well reveal values ranging from 26 cents to 38 cents per ton. Such blanket averages, however, are meaningless from a rate making standpoint for they embrace in one figure the costs on many types of cargo now moving under 10¢, 15¢, 20¢, 25¢, 27½¢, 30¢, 40¢ and 50¢ rates. The problem then becomes that of finding the costs for each type of cargo to the end that the above spread of rates can be checked or adjusted.

The first step is that of breaking down the tonnage into three or four natural groups upon the basis of the amount of services each group requires from the wharfinger who is acting as the agent for the steamship company in checking, receiving and delivering the goods.

Three such groups follow:

(1) General cargo moving through the transit shed.

(2) General cargo handled directly to and from rail cars upon the apron.

(3) Bulk cargo handled directly to and from rail cars on the apron (as sand, copra, chalk and sulphur).

If, for example, a terminal handles tonnage in all three of the above groups at an average cost of 30 cents per ton, this figure must be broken down and the cost isolated for each of the three groups before it becomes useful in estab-

[fol. 2152] lishing rates. This was done. The procedure was as follows:

The services required for a ton of general cargo checked from the vessel and deposited at point of rest in the transit shed and subsequently, within the free time period, checked to the consignee were considered as constituting a complete 100 per cent service. This inbound ton, it is assumed, enjoys the complete service called for in the tariff. It has been checked twice, once from the vessel and a second time to the consignee. It has required a full quota of dock supervision, watchmen service, accounting and billing, clerical paper work, stationery and postage, telephone and telegraph, etc.

Now consider a second ton of general cargo loaded directly into a rail car on the apron. One checking instead of two suffices; hence only 50 per cent of a "complete service" is required for checking. The supervisory costs are likewise reduced. The costs of shed, watchmen and sweeping are completely eliminated. It takes only 30 per cent of the clerical work of the ton above; but, on the other hand, it takes a full quota of the accounting and telephone and telegraph expense.

Consider now a third ton—a ton of bulk cargo loaded directly from the vessel to a rail car on the apron. An example would be a ton of coke or a ton of Belgium silica sand. It, too, will require only one checking service. In fact, it will not require as much checking expense as will the second ton mentioned above for one clerk may watch two or three ship hatches at a time on bulk cargo. More tons per clerk-hour may be handled. The authors estimate that this ton will take only 50 per cent of the second ton's checking expense and 25 per cent of a "complete checking [fol. 2153] service." It will also take a less than "complete service" on the remaining items.

With this brief background, there is presented below a study of service charge costs which reflects the costs at four private terminals. (For the allocation of terminal expenses against the service charge item, see Part III, Chapter I, of this report).

1. *Proportion of a "complete" service taken by the three groups of cargo mentioned above:*

It is assumed for all practical purposes that Column (3) consumes a 100 per cent portion of the items listed.

Costs	Bulk Loaded Direct % of (3) (1)	General Cargo Loaded Direct % of (3) (2)	General Cargo Moved Through Shed (3)
Direct Dock Costs:			
(1) Labor Checking:	25%	50%	100%
Explanation: In loading direct, the checking to and from consignee is eliminated; hence the checking cost is cut 50 per cent on general cargo. (See Column (2) above.) On bulk cargoes loaded direct, it is assumed that the cost per ton is again cut in half. These estimates are based upon a study of terminal operations and the judgment of the authors of this report.			
(2) Miscellaneous Dock Labor:	None	None	100%
Explanation: This consists of occasional handling or assembling of cargo due to partial or incomplete deliveries by consignees or the honeycombing of piles by stevedores. It only occurs on cargo lying within the shed.			

[fol. 2154]

Indirect Costs:			
(1) Salaries:			
(a) Managers & Superintendents	15%	37%	100%
Explanation: Based on previous allocations of dock labor costs.			
(b) Sales and Solicitation	20%	100%	100%
Explanation: Bulk cargo handled in large lot shipments requires less solicitation per ton than the average general merchandise cargo. Based on authors' estimate.			
(c) Permit and Manifest Clerks	15%	30%	100%
Explanation: Clerical work in making up dock manifests; dock receipts; loading lists; over, short, and damage reports; etc. Cargo not passing through the transit shed does not require all these services.			
(d) Accounting Expense	100%	100%	100%
(e) Messengers	20%	40%	100%
(2) General Costs:			
(a) Claims	None	None	100%
Explanation: Claim costs embrace only claims on shed cargo chargeable to service charges.			
(b) Insurance Premiums	10%	20%	100%
Explanation: A judgment estimate based upon an examination of the ten to twelve policies carried by each terminal.			

[fol. 2155]

(c) Upkeep Messenger's Car	20%	40%	100%
(d) Tel. and Tel.	100%	100%	100%
(e) General Supplies	5%	10%	100%
(f) Heat and Light for the Office	100%	100%	100%
(g) Watchmen (Shed)	None	None	100%
(h) Janitors (Office)	100%	100%	100%
(i) Sweepers (Shed)	None	None	100%
(j) Dock Lights	100%	100%	100%
(k) Bad Debts	100%	100%	100%
Explanation: Embraces only uncollectible items against the vessel.			
(l) Legal Expense	100%	100%	100%
(m) Tariff Services	100%	100%	100%
(n) Maintenance, Depreciation, Taxes and 7% Return on Office Space, Furniture, Fixtures and Equipment	60%	70%	100%
Explanation: Embraces only those items and areas devoted to the rendering of vessel services. The above percentages reflect the result of a much more detailed breakdown of this item.			

[fol. 2156] The second step is that of taking the total annual terminal cost for each of the expense items listed below and breaking that cost down into the proportions indicated, with proper weighting, of course, for the volume of tonnage moving in each group.

It is not intended or desired to set forth herein the specific costs of each terminal. Furthermore, a mathematical average for the five terminals would be misleading for three reasons:

1. No two accounting systems or classification of accounts were found to be the same and hence comparisons could be safely made only after a study of those items which have gone into each individual account.

2. Such an average would neither reflect nor permit of an appreciation of the differences in the character of tonnage each terminal receives. For example, there is a wide variation even in the cost of handling general cargoes alone, depending upon the nature of the cargoes and whether they are moving in small lots to many shippers or arriving in large lots destined for a few shippers. These factors vary appreciably at the different terminals.

3. The proportion of tonnage consisting of (1) bulk handled directly to cars, (2) general cargo handled directly to cars, and (3) general cargo handled through sheds varies so much for each terminal that a composite figure is meaningless.

With this explanation, there is presented below an illustration of the procedure.

[fol. 2157] Having the annual cost of each item, the tonnage moving in each of the three groups, and the proportionate amount of service each group consumes of each cost item, the cost per ton is directly obtainable.

An illustration follows with some representative costs drawn from the terminal's books, but with adjustments for the tonnage shown herein. The costs per ton are typical.

Typical Cost Items	Total Annual Cost	Bulk Tonnage Direct to Cars 10,000 Tons		General Cargo Direct to Cars 22,000 tons		General Cargo Through Shed 68,000 tons		Over-all Average 100,000 Tons
		% of (3)	Cost Cents Per Ton	% of (3)	Cost Cents Per Ton	100%	Cost Cents Per Ton	Cost Cents Per Ton
		(1)		(2)		(3)		(4)
Labor Checking	$10,000	25%	3.1	50%	6.2	100%	12.3	10.0
Misc. Dock Labor	2,000	None		None		100%	2.9	2.0
Permit and Manifest Clerks	3,400	15%	0.7	30%	1.4	100%	4.5	3.4
Accounting Expense	1,000	100%	1.0	100%	1.0	100%	1.0	1.0
Claims	450	None		None		100%	0.7	0.4
Salaries Solicitation	1,400	20%	0.3	100%	1.5	100%	1.5	1.5
Other Soliciting Expense	500	20%	0.1	100%	0.5	100%	0.5	0.5

Note: Values two places or more beyond the decimal were dropped in the above illustration.

The over-all average costs for the 100,000 tons are thus broken down into the costs for each class of tonnage. For [fol. 2158] example, the average checking cost of ten cents per ton becomes a cost of 3.1 cents, 6.2 cents and 12.3 cents for the three classes of tonnage, respectively.

The mathematical method used to derive the cost per ton is as follows, using as an example the above labor checking cost of $10,000 and for simplicity substituting directly the respective percentages, i.e., 25%, 50% and 100%, for this item:

Let x = the cost per ton upon cargo enjoying a full service, i.e., general cargo moving through the shed. (See Col. 3.)

Then 0.25x = cost per ton on bulk cargo loaded directly to cars. (See Col. 1.)

And 0.50x = the cost per ton on general cargo loaded directly to cars. (See Col. 2.)

Also: Let b = bulk tonnage.
" d = general cargo tonnage loaded direct.
" s = general cargo tonnage handled through shed.

Then: $0.25x(b) + 0.5x(d) + x(s) = \text{Total Cost}$

Or: $0.25b + 0.5d + s = \text{Total Cost}$

$$\frac{\text{Total Cost}}{x}$$

Or: $$x = \frac{\text{Total Cost}}{0.25b + 0.5d + s}$$

Substituting actual costs and the tonnages from the checking item:

$$x = \frac{\$10{,}000}{0.25\ (10{,}000) + 0.5\ (22{,}000) + 68{,}000}$$

Or: $$x = \frac{\$10{,}000}{81{,}500} = 12.3¢$$

Hence: A general cargo ton handled through the shed cost 12.3¢.

A general cargo ton loaded direct to cars cost 50% of 12.3¢ or 6.2¢.

A ton of bulk cargo cost 25% of 12.3¢ or 3.1¢.

[fol. 2159] This procedure was followed for each of the items into which the service charge was broken down. At

the Howard Terminal a fourth grouping was introduced to determine the service charge cost on low grade bulk products handled only in volume through the bunkers at this terminal, the only public facilities of their kind on the Bay. The purpose of the authors in making such a study was to lay bare sufficient facts and information concerning the construction and "build-up" of the service charge rates that guess work could be reduced to a minimum.

There are listed below the individual items of cost entering into the construction of the service charge, upon each of which the above studies were conducted. The variability in the classification of the accounts at the different terminals explains any apparent duplication.

Direct Dock Costs:

1. Labor Checking.
2. Miscellaneous Dock Labor.
3. Compensation Insurance.
4. Social Security Taxes.

Indirect Costs:

Salaries:

1. Salaries of Managers and Assistants.
2. Sales and Solicitation.
3. Accounting and Billing.
4. Steamer Service or Permit and Manifest Clerks.
5. Timekeeper.
6. Telephone Operator.
7. Messengers.

[fol. 2160] General Expenses:

1. Telephone and Telegraph.
2. Recoopering.
3. Watchmen.
4. Solicitation Expense.
5. Advertising.
6. Stationery and Printing.
7. Postage.
8. Messenger's automobile.
9. Commutation.
10. Office Janitor Service.
11. Electricity and Gas—Office.

12. Water and Lights—Office.
13. Water on the Dock.
14. Dock Lights.
15. Miscellaneous Supplies.
16. Tariff Expense.
17. Legal Expense.
18. Auditing Expense.
19. Bad Debts.
20. Strike Expense—Extra Watchmen.
21. Absorptions (Based on gross revenue prorated).
22. Depreciation, Repairs, Taxes and Return.

(Embraces that portion chargeable against service charges on office buildings, furniture and fixtures, office machines and dock equipment.)

Upon a breakdown of the above items into the various categories as above explained, the authors of this report find the service charge costs to be as follows:

1. On bulk commodities moving through bunkers—Howard Terminal—3¢ per ton.
2. Bulk cargoes direct to or from cars—11¢ to 16.5¢ per ton.
3. General cargo direct to or from rail car 16¢ to 21¢ per ton.
4. General cargo moving through shed—32¢ to 41¢ per ton.

It must be remembered, however, that at the present time the item of service charges in the East Bay embraces dock- [fol. 2161] -age (excepting in the Coastwise and Inland Waterway trades), even though the tariffs do not so state. The total dockage costs, if spread on a per-ton basis, average ten cents per total ton handled. To the above service charge costs must be added dockage costs to the degree that the latter are not embraced in the dockage charge. Present bulk tonnage service charges, on such a basis, would be highly non-compensatory. It is apparent that any bulk tonnage now handled at ten cents is getting free dockage, i.e., after deducting service charge costs there is nothing left for dockage.

The authors of this study find that the total charges for both service charges and dockage combined should be increased approximately *seven per cent as a whole*. This is necessary to make such charges barely compensatory.

As it is proposed elsewhere in this report that a dockage charge be assessed and as such dockage charge will, with some service charge adjustments, approximate seven per cent increase, no general adjustments in service charges are necessary. What adjustments are made are for the purpose of removing present discriminatory features.

The following service charges are recommended for application at the East Bay terminals:

[fol. 2162] Proposed Service Charges

(Rates in cents per 2,000 lbs. except as noted)

Item No.		Proposed Rate	Present Rate
	Coastwise Inbound Trade:		
	Cargo N. O. S.:		
1.	(a) In bulk, ex vessel direct to barge or open car	15	[1] 10
2.	(b) Ex vessel direct to barge or open car	27½	27½
3.	(c) Other than described in paragraphs (a) and (b)	35	[2] 35
		35	[3] 50
4.	Automobiles, or other vehicles, set up on wheels—each	100	100
5.	Feed, N. O. S. viz., Animal and Poultry	32½	30
6.	Grain and Grain Products, viz., Cereal Food Preparations, Flour, Grain	32½	30
7.	Lumber (Softwood), Lath, Shingles, Ties, Posts, Bark and Piling:		
	When for transshipment via ocean-going vessels	Free	Free
8.	When not for transshipment via ocean-going vessels:		
	Handled through shed, per M. F. B. M.	37½	[4] 30
	Handled Over Uncovered Facilities:		
9.	Lumber, Ties, Posts, Bark and Piling, per M. F. B. M.	10	10
10.	Lath, per 60 bundles	10	10
11.	Shingles, per 40 bundles	10	10
12.	Meal, fish	32½	30
13.	Paper Products, viz., Boxboard, Fibreboard, Newsprint, Pulp, Tray, Waste and Wrapping	32½	27½
14.	Pig Lead, ex vessel direct to car	27½	30
15.	Potatoes	32½	30
16.	Shook, box or crate	32½	30

[1] Restricted to barge or open car, except Grain and Oil, in bulk.
[2] Carloads, N. O. S.
[3] Less-than-carload.
[4] Rate on per ton basis of 2000 lbs.

[fol. 2163]

Item No.		Proposed Rate	Present Rate
	Coastwise Outbound Trade:		
	Cargo, N. O. S.:		
17.	(a) In bulk, ex car or barge direct to vessel	15	[1] 10
18.	(b) Ex car direct to vessel	27½	30
19.	(c) Other than described in paragraphs (a) and (b).	35	[2] 30
		35	[3] 50
20.	Automobiles, or other vehicles, set up, on wheels, each	100	100
21.	Cement	32½	30
22.	Feed, animal and poultry	32½	30
23.	Flour	32½	30

Proposed Service Charges (Cont'd)

Item No.		Proposed Rate	Present Rate
24.	Salt	32½	30
25.	Salt Cake	32½	30
26.	Sand	32½	30
27.	Sugar	32½	30

[1] Restricted to Asphalt, emulsified.
[2] Carloads, N. O. S.
[3] Less-than-carload.

Intercoastal Inbound Trade:

Cargo, N. O. S.:

28.	(a) In bulk, ex vessel direct to barge or car	15	10
29.	(b) Ex vessel direct to barge or open car	27½	27½
30.	(c) Other than described in paragraphs (a) and (b)	50	50
31.	Automobiles, or other vehicles, set up, on wheels, each	100	[1] 50
32.	Earth, fullers, in packages, in lots of 500 tons or over	35	35
33.	Fibreboard, in bundles, in lots of 200 tons or over	35	35
34.	Pipe, pressure, cast iron (not soil pipe)	40	40
35.	Steel, sheet, in packages, weighing 1,000 lbs. each or over	40	40
36.	Tinplate	35	35

[1] Rate on per ton basis of 2,000 lbs.

[fol. 2164]

Intercoastal Outbound Trade:

Cargo, N. O. S.:

37.	(a) In bulk, ex car direct to vessel	15	[1] 10
38.	(b) Other than described in paragraph (a)	42½	40
39.	Beans; Copra; Cotton; Cutch; Hemp; Meals and Meal Cake; animal, fish, vegetable; peanuts; rags; rice; Seed: When received ex Transpacific vessel	32½	25
40.	Copper Slabs, ex car direct to vessel	27½	27½
41.	Hay	32½	27½
42.	Lumber, per M. F. B. M.	37½	37½

[1] Restricted to Oil, in bulk.

Hawaiian Inbound and Outbound Trade:

Cargo, N. O. S.:

43.	(a) In bulk, direct between car and vessel	15	15
44.	(b) Other than described in paragraph (a)	42½	40

Alaskan Inbound and Outbound Trade:

Cargo, N. O. S.:

45.	(a) In bulk, direct between car and vessel	15	40
46.	(b) Other than described in paragraph (a)	42½	40

Foreign Inbound Trade:

Cargo, N. O. S.:

47.	(a) In bulk, ex vessel direct to car	15	10
48.	(b) Ex vessel direct to barge or open car	27½	25
49.	(c) Other than described in paragraphs (a) and (b)	50	50
50.	Balls, grinding, iron or steel, loose	35	35
51.	Cement	32½	25
52.	Fertilizers, viz., Calcium Nitrate, Nitrogen, Potash, Sulphate of Ammonia	32½	25
53.	Paper and Paper Products, viz., Boxboard, Fibreboard, Newsprint, Pulp, Tray, Waste and Wrapping	32½	25
54.	Seed	32½	25
55.	Sugar	32½	25
56.	Tinplate	35	35

[fol. 2165]

Proposed Service Charges (Cont'd)

Item No.		Proposed Rate	Present Rate
	Foreign Outbound Trade:		
	Cargo, N. O. S.:		
57.	(a) In bulk, ex car direct to vessel	15	[1] 10
58.	(b) Other than described in paragraph (a)	42½	40
59.	Barley	32½	25
60.	Boxboard	32½	27½
61.	Copra, in bags	32½	25
62.	Copper Slabs, ex car direct to vessel	27½	27½
63.	Iron and Steel Articles, viz., Bars, Plate, Rail, Sheet and Structural, ex car direct to vessel	25	25
64.	Lumber, per M. F. B. M.	37½	[2] 25
65.	Lumber, per M. F. B. M.	37½	[3] 37½
66.	Meals and Meal Cake, viz., Animal, Fish, and Vegetable	32½	[4] 25
67.	Wheat	32½	25

[1] Restricted to Oil, in bulk.
[2] Applies on minimum of 250,000 ft. B. M. per shipment.
[3] Applies when less than 250,000 ft. B. M., per shipment.
[4] Applies on Oil Cake, Oil Cake Meal and Fish Meal.

	Transpacific Inbound Trade:		
	Cargo, N. O. S.:		
68.	(a) In bulk, ex vessel direct to barge or car	15	15
69.	(b) Ex vessel direct to barge or open car	27½	35
70.	(c) Other than described in paragraphs (a) and (b)	50	50
71.	Beans, Cotton, Cutch, Hemp,	When for transshipment via ocean-going vessel	32½	32½
72.	Peanuts, Rice and Seed		32½	32½
73.	Lumber, per M. F. B. M.		37½	[1] 32½
74.	Ammonia, sulphate of		32½	32½
75.	Copra, in sacks		32½	32½
76.	Meals and Meal Cake, viz., Animal, Fish and Vegetable		32½	32½
77.	Pig Iron, ex vessel direct to barge or open car		15	15
78.	Rags		32½	32½
79.	Seed		32½	32½
80.	Sugar		32½	32½

[1] Rate on per ton basis of 2,000 lbs.

[fol. 2166]

Item No.		Proposed Rate	Present Rate
	Transpacific Outbound Trade:		
	Cargo, N. O. S.:		
81.	(a) In bulk, ex car or barge direct to vessel	15	[1] 15
82.	(b) Ex barge direct to vessel	30	30
83.	(c) Other than described in paragraph (a) and (b)	50	50
84.	Ammonia, sulphate of	32½	30
85.	Boxboard	35	35
86.	Cotton	25	35
87.	Lumber, per M. F. B. M.	37½	50
88.	Petroleum and Petroleum Products, including oils and greases having a petroleum base, and Asphalt (Asphaltum), in packages	32½	30
	Scrap Material:		
89.	(a) Ex dock to vessel	25	25
90.	(b) Ex barge or open car direct to vessel	15	15

[1] Restricted to Oil, in bulk.

Proposed Service Charges (Cont'd)

Item No.		Proposed Rate	Present Rate
	Proposed Charges Against Ocean-Going Vessels Not Calling Direct.		
91.	When the ocean-going vessel transships cargo from or to a terminal by means of an inland waterway vessel, the total charges against the ocean carrier (consisting of the above service charges, and the toll charges absorbed by such carrier), shall be reduced as follows: (a) In the offshore trades, ten cents (10¢) per ton of 2,000 lbs. (b) In the coastwise trade, five cents (5¢) per ton of 2,000 lbs.		
92.	Bulk commodities moving through bunkers, Howard Terminal.....	3	0

[fol. 2167] The adjustments in service charges above are justified as follows: The authors interpret the term "to meet minimum cost requirements," as used herein, as meaning the establishment of a rate which will compensate for service charge costs plus a greater or lesser contribution toward dockage costs. Such costs for each class of tonnage have been presented previously in this chapter. Other adjustments are for the purpose of bringing the charges into line with those for analogous services in other trades.

Item No.

1. To meet minimum cost requirements.
3. Reduction of L.C.L. rates from fifty cents to thirty-five cents to remove discrimination against L.C.L. traffic and to eliminate present conflicting interpretations of this item.
5. To meet minimum cost requirements.
6. To meet minimum cost requirements.
8. To place charge on a per M.F.B.M. unit in lieu of per ton unit. The former conforms with the practice in other trades and constitutes the more desirable unit.
12. To meet minimum cost requirements.
13. To meet minimum cost requirements.
14. To place on basis comparable to analogous commodities, i.e., copper slab, etc.
15. To meet minimum cost requirements.
16. To meet minimum cost requirements.
17. To meet minimum cost requirements.
18.) To introduce more equitable rate relationship
19.) between cargo handled direct and cargo handled through shed.
21. To meet minimum cost requirements.

[fol. 2168]

Item No.

22 to 28 incl. To meet minimum cost requirements.

31. Rate adjusted to Coastwise basis of one dollar ($1.00) each. Latter more closely reflects cost.

37 to 39 incl. To meet minimum cost requirements.

41 & 44. To meet minimum cost requirements.

46 to 48 incl. To meet minimum cost requirements.

51 to 56 incl. To meet minimum cost requirements.

57 to 61 incl. To meet minimum cost requirements.

64, 66 and 67. To meet minimum cost requirements.

69. Reduction—to place charge on same basis as that applicable in identical movements in other trades.

73. Reduction—to place charge on same basis as that applicable in identical movements in other trades.

84. To meet minimum cost requirements.

87. Reduction—To place charge on same basis as that applicable in identical movements in other trades.

88. To meet minimum cost requirements.

91. At the present time, on barged cargo, as herein described, the ocean carriers absorb the toll of five cents. With the suggested increase in tolls to fifteen cents Coastwise and twenty-five cents Offshore, the burden against the vessel is correspondingly increased. In order that non-calling passenger lines be not unduly penalized, the above suggestion is made.

92. At the present time no charge is made upon this movement. The service charge cost is absorbed in the stevedoring charges assessed by the terminal. It is recommended that a proper service charge cost be assessed independently of the stevedoring charges.

[fol. 2169] The final result of the above recommended service charge adjustments, plus the assessment of the

dockage charges recommended in Chapter IV, will result in a net increase of between six and seven per cent in all charges against the vessel at the East Bay major terminals.

As the two San Francisco terminals handle a considerable volume of general cargo from the Orient which is of low density, but which is commonly carried by the vessel on a weight basis, the use of ship's manifest weight in determining service charges results in a non-compensatory charge for service rendered. It is recommended that these two terminals place their service charges on a weight or measurement basis, whichever is the higher, such measurement to be determined by the terminal independently of ship's manifest.

[fol. 2170] Chapter VII

Free Time:

The free time is the period allowed for assembling or removing cargo upon the wharves. Upon its expiration, demurrage charges are assessed. The determining factor as to what constitutes a proper free time period is the amount of time reasonably necessary for the shipper to assemble his goods or the consignee to remove them, and for the vessel to load or discharge its cargo. If the period is too short, it may unduly handicap the shipper. If it is too long, it constitutes an economic waste of valuable space which is being deprived of its most effective use.

In the long run every additional day's time adds to the terminal costs and eventually this cost is passed on to the consumer of the service. If the particular requirements of certain shippers or certain cargoes necessitate the goods remaining for extended periods on the wharves, it appears as only reasonable that those enjoying this additional service should be the ones to pay for it.

The question thus becomes that of determining what constitutes a reasonable period of time in which to assemble cargo. Consider first the outbound movement. The following factors were noted:

1. The free time period should be adequate not only for the small shipper, but also for the large shipper.

2. The free time period should be uniform throughout the Bay district at both public and private facilities. (One recommended exception is dealt with below.)

[fol. 2171] 3. Single shipments (as on canned goods moving outbound in the Intercoastal or European Trades) may consist of 5,000 to 10,000 cases.

(a) Such shipments may have to be assembled from storage plants or canneries in any one or all of the following points of origin: Santa Clara Valley, Sacramento Valley, San Joaquin Valley and local Bay territory.

(b) The separate portions of the consolidated shipment may arrive by rail, barge, river steamer or truck and require one or two days for delivery from plant to dock. Under such conditions the shipper cannot gamble with the last available day, but must allow some period for contingencies.

(c) On a small shipment from one plant the physical limitations of the plant in loading to rail cars or to trucks may require the expiration of one, two or three days between the delivery of the first case and the last case on the dock.

4. The vessel's organization requires time. The vessel may pick up from 1,000 to 3,000 tons at a San Francisco Bay port.

(a) This cargo must be assembled on the dock in accordance with the vessel stowage plan and ports of discharge before it is loaded.

(b) On foreign vessels time must be had for the issuance of dock permits, bills of lading and ships' manifests, all of which must be issued in sufficient time to permit the necessary papers to be aboard the vessels when they sail.

[fol. 2172] (c) Should the free time be so shortened that the cargo becomes bunched rather than arriving in a continuous stream, it would be difficult if not impossible to perform the above operations without delaying the vessel.

(d) The vessel may lie at San Francisco two, three or four days loading. It is desirous of receiving the goods uniformly throughout this period and, furthermore, to have cargo assembled and ready for loading the moment the ship docks. This requires that a sizeable portion of the cargo be received one, two or three days prior. If the load-

ing of a portion of such tonnage, received two or three days in advance, be delayed for the convenience of the vessel until the last day of the vessel's loading, a total of five, six or seven days might easily be consumed.

5. An eastbound European vessel will require, on the average, about four days of continuous loading at the various San Francisco Bay ports to pick up the usual 2,500 or 3,000 tons consigned from this port area. Hence there is always an element of uncertainty arising from possible local changes in the vessel's schedule which might sharply curtail the period for assembling the cargo at any one terminal.

Upon consideration of the above factors, the authors conclude that in the outbound Intercoastal and foreign trades seven days constitutes a reasonable period in which to permit the shipper to assemble his goods and to permit the [fol. 2173] steamship organization or its agents to most economically perform the loading of the vessel and the auxiliary operations requisite thereto.

On Coastwire movements the sailings are more frequent, the vessels are smaller and the tonnage loaded or discharged is therefore smaller. There is not the need for the assembly of the large shipments such as exist in the offshore trades. For these reasons a five day free time period is held to be sufficient.

On the inbound movements certain of the vessel's paper work is eliminated; but in the Foreign trades another factor, customs clearance, must be weighed. In some instances customs clearances can be obtained in one day while in other cases, particularly during periods of congestion, four days may be required. However, on general merchandise two days is usually sufficient from the time the necessary papers are received by the custom's broker until the consignee can pick up his cargo on the dock. Frequently, however, the necessary documents arrive on the same boat with the cargo. This may delay the mails a day and add another twenty-four hours to the delays occasioned by the customs procedure.

In consideration of this factor as well as those mentioned above, seven days' free time is recommended in the inbound Foreign trades. In the Coastwise and Intercoastal trades, where the factor of customs does not apply, five days ap-

pears sufficient. At the present time, however, the Port of San Francisco grants seven days' free time on inbound Intercoastal cargo and, unless this is reduced, it is recommended for purposes of uniformity that the same period [fol. 2174] be prescribed for the private terminals. The five day period is generally applicable at other ports on the Pacific coast.

On transshipment cargo ten days is recommended to provide for unavoidable delays and uncertainties in the interchange of freight between carriers engaged in different trades.

One exception to the above free time periods is believed necessary. At the San Pablo dock of the Parr-Richmond Terminal Corporation a free time period of twenty-one days is recommended on petroleum products in packages. This cargo moves to the Orient from the local refineries in shipments of from 500 to 8,000 tons. In view of the limited rail facilities and switching services available at this terminal facility, a continuous flow of the cargo over a ten to twenty day period is required for assembly. The operator would otherwise suffer penalties from rail demurrage and overtime car unloading labor costs.

It is further recommended that the free time period in the Inland Waterway trades be the same as in the Coastwise trade. Where vessels are delayed beyond the scheduled sailing date because of stress of weather, breakdowns, accidents or other emergencies, it is recommended that the free time limit be extended three days. This is necessitated by the uncertainties of the East Bay calls when the vessels are delayed.

[fol. 2175] To sum up, the free time period recommendations are as follows:

	Inbound	Outbound
Coastwise & Inland Waterway	5 days	5 days
Intercoastal	5 days	7 days
Foreign	7 days	7 days
Transshipment	10 days	10 days

[fol. 2176] Chapter VIII

Wharf Demurrage:

Wharf demurrage is defined as that charge accruing upon cargo left in the possession of the terminal beyond the free time period.

Wharf demurrage was originally a penalty charge to ensure that goods would not remain on the docks for a longer period than was reasonably necessary for the carrier or the consignee to remove them. If the shipper or consignee desired the goods held, they were left in storage areas for which a period wharf demurrage rate was assessed, plus a handling charge in some cases; but today, under the influence of competition, the wharf demurrage rates have been so reduced and the rules and practices so liberalized that the charges in general are non-compensatory.

This is particularly true where a shipper indicates that he desires the goods to remain for a period at the terminal. The latter, to obtain the most effective use of its space, high piles the cargo or moves it to back areas. The following day the shipper changes his mind and removes the goods. The terminal, for direct labor alone, will have spent twenty cents per ton, but has received from the shipper approximately 1¼¢ per ton per day for three or four days, or a total of about five cents. When proper allowance has also been made for floor space occupancy, checking in, checking out, accounting, billing, watchmen services and other overhead, the absurdity of the present rate structure becomes apparent. Even without the 15¢ to 25¢ per ton labor cost, the charges are highly non-compensatory in the above instance.

[fol. 2177] The wharf demurrage problem is a two-fold one. The first problem is that of raising the charges to a compensatory level. A minimum increase of 33 per cent is necessary to make demurrage charges compensatory under the most favorable conditions. The second problem is that of so developing the rate structure that cargo, regardless of the period of time it lies in demurrage, will have compensated as closely as possible for the particular services it has received and the expenditures it has occasioned.

The first step was to assemble the necessary cost data, which was obtained as follows:

(1) Floor space—cost per square foot per thirty days:

(a) The annual charges were determined for each terminal, and also for each transit shed where construction costs differed. This embraced charges for maintenance, depreciation, return and taxes.

(b) The following factors were noted: The aisle spaces in demurrage areas occupied 30 per cent of the total area.

(Access has to be provided to the pile for both stevedore jitneys and trailers and for the shipper's or consignee's truck and trailer units. In fact, there is no demarcation between transit areas and demurrage areas, although it has been determined that approximately 20 per cent of the terminal floor space is required solely to handle demurrage cargo and is chargeable to this account. This represents the areas necessary to store the demurrage goods after the expiration of free time period).

Of the remaining demurrage space occupied, it cannot be considered that it is 100 per cent revenue producing throughout the year. Allowances must be made for working areas, for waste space around piles, for shipments honeycombed because of partial deliveries or partial receipts, and for dull periods or seasons when idle areas are [fol. 2178] carried for the purpose of meeting demurrage demands at other seasons. On the other hand, it is to be noted that the many ramifications of the terminal business permit a high degree of effectiveness in the utilization of space.

Upon due consideration of all these factors, it is estimated that not over 85 per cent of the demurrage areas (after deducting aisles) can be considered as utilized to capacity the year round.

For purposes of comparison and clarification, the authors herein interpret 100 per cent capacity use (after deducting aisles) as the unbroken occupancy of every square inch of space with the cargo piled to its economic height, which is one tier high on some commodities, two tiers high on others, and even three tiers high on low density commodities, but averaging about 1.6 tiers over all goods. A tier is that height to which a stevedore, under his union rules, will stack the goods in discharging a vessel, or the maximum height of a pile from which he will lift goods in loading a vessel. The height of such tiers in terms of feet, or in terms of cases, has been determined and is presented in tables below. The economic height to which goods should be piled depends upon a proper balance between the labor cost of piling and the fixed charges incurred upon the extension of floor space.

To sum up, it must be noted that out of a given area chargeable to demurrage, whether it is one square foot or 50,000 square feet; 30 per cent of that area is necessary for aisle space and of the balance only 85 per cent is used [fol. 2179] to that capacity upon which the tariff charges herein recommended are predicated.

This is set up below:

Total demurrage areas		100%
Aisles and roadways	30 %	
Cargo areas—70%:		
Waste areas—15% to 70%	10.5%	
Revenue producing areas—85% to 70%	59.5%	
Total	100.0%	100.0%

Thus, out of every 100 square feet chargeable to demurrage, 30 square feet of aisles and 10.5 square feet of waste areas are non-revenue producing, leaving 59.5 square feet as revenue producing. The 40.5 square feet cannot be chargeable to other services because it is used solely for the benefit of cargo on demurrage and could be dispensed with should the terminal eliminate all demurrage and storage. Areas that would have been required by such cargo during its free time period are not here included.

The authors have, for convenience, used the value of 60 per cent in lieu of the 59.5 per cent. Hence in the determination of floor space cost for any given commodity, it is assumed that the pile only occupies 60 per cent of the total space required and that the carrying charges on the waste areas and aisle areas are charged to the 60 per cent. Thus if the annual charges on a 100,000 square-foot shed totalled $40,000, for purposes of constructing demurrage rates the costs should be spread over 60 per cent of 100,000 [fol. 2180] square feet, or 60,000 square feet. However, if an entire building, including aisles, roadways and waste areas, were leased to one party, the 100,000 square-foot area would naturally be used for purposes of cost determination.

(2) Direct dock costs:

(a) Includes dock labor used for high piling, breaking down or moving cargo.

(b) Includes cost of dock equipment. Consists of repairs, depreciation, return and taxes on high piling machines and a pro-rata share on jitney or electric lift machines, charges being prorated to demurrage in proportion to use.

(3) Salaries:

(a) Includes clerical cost of checking, receiving and delivering.

(b) Includes an allocation of the management's salaries, traffic and solicitation, accounting and billing, etc. (For explanation of allocation, see Part III, Chapter I).

(4) General and Miscellaneous Expenses:

Includes an allocation of telephone expense, watchmen, stationery and printing, postage, tariff services, claims, uncollectible accounts, office heat, water and light.

Includes a portion of the maintenance, depreciation, return and taxes upon the office buildings, furniture and fixtures and land upon which the office rests. (See Part III, Chapter I for explanation of these allocations).

Following the assemblage of the above data, there was next required a knowledge of the characteristics of the individual commodities in order that the floor space costs, [fol. 2181] initially determined in terms of costs per square foot per year or per month, could be translated into cents per ton per month for each commodity.

These data were obtained by a physical check of the densities and pile measurements of the principal commodities and by checking the heights of the tiers permitted by union practices. With such data, the number of square feet required per ton for each of the principal commodities, both one tier and two tiers high, was obtainable. Such data are presented in the following table:

[fol. 2181] Table of Densities, Pile Heights and Square Feet Required per Ton for Each of the Principal Commodities on Wharf Demurrage

Item	Density Per Cu. Ft. In pounds	Hgt.	Weight per Square Foot of Space Occupied — Normal Piling: No. Pkgs.	Lbs.	Sq. Ft. Per Ton	Average High Piling: No. Pkgs.	Lbs.	Sq. Ft. Per Ton
Beans, dried, in sacks	33.3	6'	6	200	10			
Canned Goods, in cases	40.0	6' 8"	7	270	7.4	14	540	3.7
Fertilizers—in sacks:								
Nitrate of Soda	83.3	3' 6"	5	292	6.85	10	584	3.43
Potash	77.0	3' 6"	5	269	7.43	10	538	3.72
Ammonia, sulphate	37.1	3' 6"	5	130	15.38	10	260	7.69
Cereals, prepared, in pkgs.	8.0	7'	7	56	35.71	14	112	17.86
Seed, hemp & sesame, sacks	36.0	3' 6"	4	130	15.38	10	325	6.15
Peat Moss, in bales	12.5	6'	4	75	26.66	8	150	13.33
Refrigerators, crated	7.4	4'	1	30	66.66			
Steel Sheets, in bdls.	300.0	4'	4	1200	1.66			
Rubber, raw, in cases	80.0	4' 6"	3	360	5.55			
Excelsior, wood, in bales	9.2	6'	4	55	36.36	12	165.	12.12
Paper, Newsprint, in rolls	30.3	5'	1	152	13.15			
Paper, Toilet, in cases	10.0	6'	3	60	33.33	9	180	11.11
Cleaning Compound, liquid, in cases	40.8	6' 6"	7	265	7.54			
Meal, fish, in sacks	39.2	6'	6	235	8.51	12	470	4.26
Sisal, Kopak, in bales	16.5	5'	3	83	24.10	6	166	12.05
Soda Ash, in sacks	40.8	4'	3	163	12.27	6	326	6
Flour, grain, in sacks	44.4	6'	7	286	7.52			

[fol. 2182] The floor space costs used for demurrage and storage rate-making purposes is 3.55 cents per square foot per month. This represents the lowest cost floor space available at the terminals. This cost study indicates that the cost per square foot rises abruptly for buildings supported in whole or in part on pile foundations. The higher the floor cost, other things being equal, the sooner it becomes economically necessary to high pile.

In addition to the floor space costs, an analysis is necessary of the labor costs and overhead costs. Labor costs for high piling were obtained at several terminals. They varied widely according to the type of commodity, the wages paid and the equipment used. The value of twenty cents per ton was found to constitute a minimum cost on the average for piling cargo to a second tier height and for breaking it down.

On commodities not high piled, an average cost of 2.5 cents per ton was incurred. This represented the cost to the terminal for the assemblage of broken lots honeycombed by the shipper, for the occasional shifting of the demurrage cargo or other cargo when it has been blocked off by other tonnage and is not available to the consignee or the stevedores, etc.

Concerning the overhead costs, it is to be noted that certain of these are largely fixed or constant. They do not vary appreciably with the length of time the goods remain in storage. The moment the cargo touches the floor, whether it be for one day or thirty days, these costs are incurred. Such costs are those for checking the cargo to and from the consignee, the cost of billing, stationery and [fol. 2183] supervision of the initial receipt, delivery or handling (if any is required), etc.

On the other hand, there are other overhead costs which generally vary with the length of time the goods remain on hand. The longer the period, the greater the expense. Such costs, for example, consist of traffic and solicitation (when prorated on a gross revenue basis), watchmen, claims, messengers, insurance premiums, etc.

For purposes of rate making, all labor and overhead costs were determined and broken down as indicated below. The values presented herein represent the lowest cost terminal service, and rates were predicated upon such.

Analysis of Demurrage Costs

1. Cost of checking to or from consignee ..... 5¢ per ton
2. Cost of piling second tier and breaking it down ..... 20¢ per ton
3. Cost of miscellaneous moving, shifting, assembling where no high piling is involved ..... 2.5¢ per ton
4. Overhead Costs:

(a) Non-variable. Costs that are largely independant of the length of time goods remain in storage.

	Per Ton
(1) Officers (50% variable)	1.03¢
(2) Sup't (50% variable)	0.11¢
(3) Accounting and billing	2.81¢
(4) Timekeeper	0.09¢
(5) Cleaning and Sweeping	1.11¢
(6) Stationery and printing	0.76¢
(7) Postage	0.38¢
(8) Tariff Expense	0.14¢
(9) Auditing	0.12¢
(10) Office and equipment (50% variable), maintenance, depreciation, return, taxes	0.55¢
Total non-variable overhead	7.10¢ per ton

[fol. 2184] (b) Variable costs that vary with length of period goods remain in storage. Adjusted to thirty-day basis.

	Per Ton Per 30 Days
(1) Officers (50% variable)	0.77¢
(2) Sup't (50% variable)	0.08¢
(3) Traffic and solicitation	1.79¢
(4) Telephone operator	0.11¢
(5) Telephone and telegraph	0.60¢
(6) Watchmen	1.80¢
(7) Miscellaneous solicitation expense	0.37¢
(8) Janitor—office	0.06¢
(9) Legal expense	1.12¢
(10) Claims	0.55¢
(11) Messengers	0.37¢
(12) Miscellaneous supplies	0.19¢
(13) Advertising	0.26¢

(14)	Bad debts	0.01¢
(15)	Directors' fees	0.06¢
(16)	Terminal Ass'n expense	0.08¢
(17)	Absorptions	0.08¢
(18)	Insurance premiums	0.06¢
(19)	Office—light, heat, power	0.17¢
(20)	Office and equipment (50% variable), maintenance, depreciation, etc.	0.42¢
(21)	All other expenses	0.22¢
	Total variable costs	9.17¢ per ton per 30 days

With this analysis it is now possible to establish rates on a cost basis. For purposes of illustration, assume a ton that requires no high piling service. Its cost will be as follows:

Fixed Costs per Ton:

Checking	5.0¢ per ton
Miscellaneous moving	2.5¢ " "
Non-variable overhead	7.1¢ " "
Total	14.6¢ per ton

Variable Costs per 30 Days:

Variable overheads	9.17¢ per ton per 30 days
Floor space	3.55¢ per sq. ft. per 30 days.

[fol. 2185] If high piling were resorted to, the 20-cent piling and breaking-down charge would replace the 2.5-cent moving cost.

Applying these costs to canned goods:

Illustration No. 1:

Total cost for sixty days for canned goods requiring 7.4 square feet per ton (not high piled).

Checking	5.00¢ per ton
Miscellaneous moving	2.50 per ton
Non-variable overhead	7.10 per ton
Variable overhead 2(9.17)	18.34 per ton
Floor space 2x7.4(3.55)	52.54 per ton
Total cost	85.48¢ per ton

Illustration No. 2:

If the canned goods had been high piled, the cost for 60 days would have been as follows:

Checking	5.00¢	per ton
High Piling	20.00	per ton
Non-variable overhead	7.10	per ton
Variable overhead	18.34	per ton
Floor space 2 x 3.7(3.55)	26.27	per ton
Total cost	76.71¢	per ton

In constructing the wharf storage rates proposed herein, the principle followed was that the rates, as closely as possible, should be based upon the cheapest method of handling. In some instances this would result in goods being left one tier high; in other cases, piled to two tiers; and in some cases piled to three tiers.

Studies were made of the costs with the cargo piled to such various heights. With this information, and with a previously acquired knowledge of the average length of time each commodity remains on demurrage, the most efficient [fol. 2186] relationship of labor handling to floor space costs was determined and used.

The rate should reflect the lowest combination of handling costs plus floor space costs. Consideration was given to the merits and practicability of wharf storage upon the basis of ten-day, fifteen-day and thirty-day periods. All periods had some merit, but by virtue of the difficulties of reasonably allocating costs with any degree of precision over the shorter periods, and in view of the fact that the rates herein are based upon a high effective use of demurrage space only obtainable upon the basis of a fifteen day or greater period, the latter basis is recommended.

On commodities occupying between six and eight square feet to the ton, unpiled, such as canned goods, fertilizers and sugar, it is a matter of indifference whether or not the goods are high-piled if they remain approximately thirty or forty days. Beyond this period it is definitely cheaper to high-pile. These relationships are based upon the low floor space costs of 3.55 cents per occupied square foot. Should a more costly type of structure be considered for storage, the period in which it becomes economically desirable to high-pile is reduced.

The storage rates proposed are listed in the accompanying table.

(Here follows 1 photolithograph, side folio 2187)

PROPOSED WHARF STORAGE RATES ON REPRESENTATIVE COMMODITIES
(Rates in Cents Per Ton of 2,000 Pounds)

ITEM NO.	COMMODITY	Receiving and Delivery Charge (1)	Floor Space Period Costs and Variable Overhead 15 Days (2)	30 Days (3)	60 Days (4)	Proposed Rate 30 Days (5)	Cost 30 Days (6)	Proposed Rate 60 Days (7)	Cost 60 Days (8)	Proposed Rate 90 Days (9)	Cost 90 Days (10)	Rates Now in Effect At East Bay Terminals 30 Days (11)	60 Days (12)	90 Days (13)
1	Beans, dried, in sacks	15¢	20¢	40¢	80¢	55¢	59¢	95¢	104¢	135¢	149¢	30¢	60¢	90¢
2	Canned Goods, N.O.S., in cases - Inbound	30	17½	35	70	65	50	100	85	135	121	37½	75	112½
3	" - Outbound	25	12½	25	50	50	54	75	77	100	99	37½	75	112½
4	Cleaning Compound, liquid, in cases - Outbound	15	17½	35	70	50	51	85	87	120	123	37½	75	112½
5	Cereals, prepared, in cases	50	35	70	140	120	105	190	177	260	250	60	120	180
6	Excelsior, wood, in bales	85	25	50	100	135	104	185	156	235	209	60	120	180
	Fertilizers, viz:													
7	Nitrates, in sacks	30	10	20	40	50	53	70	75	90	96	15	30	45
8	Potash, in sacks	30	10	20	40	50	55	70	77	90	99	15	30	45
9	Ammonia, sulphate of, in sacks	30	17½	35	70	65	69	100	105	135	142	37½	75	112½
10	Flour, grain, in sacks	30	17½	35	70	65	51	100	86	135	122	60	120	180
11	Kapok and Sisal, in bales	50	17½	35	70	85	90	120	128	155	165	90	180	270
12	Meal, fish, in sacks	30	10	20	40	50	56	70	81	90	105	60	120	180
13	Paper, newsprint, in rolls	15	20½	35	110	70	70	125	126	180	182	60	120	180
14	Paper, toilet, in cases	80	20	40	80	120	101	160	149	200	198	60	120	180
15	Peat Moss, in bales	40	25	50	100	90	89	140	145	190	202	60	120	180
16	Rubber, raw, in cases	15	15	30	60	45	44	75	72	105	101	60	120	180
17	Refrigerators, crated	15	120	240	480	255	261	495	508	735	755	60	120	180
18	Seed, hemp and sesame	35	17½	35	70	70	69	105	105	140	142	37½	75	112½
19	Soda Ash, in sacks	30	15	30	60	60	53	90	94	120	125	15	30	45
20	Steel Sheets, in bundles	15	7½	15	30	30	30	45	45	60	60	30	60	90

[fol. 2188] An explanation of the data in each column follows:

Column 1:

Contains the proposed "receiving and delivery" charges made up of the 5-cent checking cost, the 7.10-cent non-variable overhead cost, and the "miscellaneous moving" or "high piling" cost, depending upon which of the latter two [fol. 2188] will prove the cheaper over that period which the specific commodity customarily remains on storage. (Note: See explanation below of additional amounts included in some instances for partial deliveries).

Column 2:

Contains the floor space cost per ton per fifteen days plus a charge of 4.6 cents per ton per fifteen days for variable overhead costs. ($4.6¢ = \frac{9.17¢}{2}$) Values were taken to the nearest 5 cents.

Column 3:

Contains the same data for thirty days.

Column 4:

Contains the same data for sixty days.

Column 5:

Contains the proposed rate for thirty days, consisting of the receiving and delivery charge, Column 1, plus the floor space and overhead variable costs, Column 3.

Column 6:

Contains the actual cost to the terminal based upon the most effective combination of labor handling costs and floor space costs.

Column 7:

Contains proposed rate for sixty days.

Column 8:

Contains terminal cost for sixty days.

Column 9:

Contains proposed rate for ninety days.

Column 10:

Contains terminal cost for ninety days.

[fol. 2189] Columns 11, 12 and 13:

Show the rates now in effect at the East Bay terminals for thirty, sixty and ninety days, respectively.

An examination of the demurrage records of the terminal operators discloses the fact that an extreme amount of detail is required in handling and accounting for some demurrage cargoes. The following example, covering an account held under the present demurrage rate on merchandise N.O.S. of two cents per ton per day, illustrates this fact. It is an exact copy of the monthly invoices rendered to the customer. Attention is called to the fact that out of the six shipments on hand and received during the month, a total of forty-one separate deliveries were made. The wholesaler who was the consignee in this instance never removed the goods from the dock but sold them f.o.b. dock to his retail customers who called for the goods individually as the sales were made. The deliveries averaged about 2,200 pounds. This illustrates a typical use of waterfront facilities for distribution accounts.

[fol. 2190]

Merchandise—N.O.S.—For January 1935

For Wharf Demurrage Charges for your account on Merchandise on hand (10 days free time; demurrage at 2¢ per ton per day or fraction thereof, excluding Sundays and holidays)

	Pkgs.	Weight	Demurrage Period From	To	Days	
On Hand						
12/1/34	1,914	57,000#				
Dem. Starts						
12/3/34	417	26,688#	ex SS "San Diego"			
12/4/34	954	59,827#	ex SS "Point Lobos"			
12/18/34	50	2,750#	ex Truck			
12/18/34	10	350#	ex SS "Solano"			
12/21/34	241	4,579#	ex SS "San Angelo"			
Deliveries						
12/3/34	1	73	12/1/34	12/3/34	2	01
12/4/34	36	2,170	12/1/34	12/4/34	3	07
12/4/34	155	9,110	12/4/34	12/4/34	1	09
12/5/34	4	264	12/1/34	12/5/34	4	01
12/5/34	18	1,117	12/4/34	12/5/34	2	02
12/6/34	30	832	12/1/34	12/6/34	5	04
12/8/34	10	438	12/1/34	12/8/34	7	03
12/8/34	3	201	12/4/34	12/8/34	5	01
12/10/34	25	1,300	12/4/34	12/10/34	6	08
12/11/34	87	5,624	12/4/34	12/11/34	7	39
12/12/34	309	10,045	12/1/34	12/12/34	10	1.00
12/12/34	25	1,600	12/3/34	12/12/34	9	11

Merchandise N.O.S. For January 1935

For Wharf Demurrage Charges for your account on Merchandise on hand (10 days free time; demurrage at 2¢ per ton per day or fraction thereof, excluding Sundays and holidays)

	Pkgs.	Weight	Demurrage Period From	To	Days	
On Hand						
12/12/34	4	246	12/4/34–12/12/34		8	.02
12/13/34	105	6,720	12/3/34–12/13/34		10	.67
12/13/34	63	3,641	12/4/34–12/13/34		9	.33
12/15/34	50	3,200	12/3/34–12/15/34		12	.38
12/15/34	15	780	12/4/34–12/15/34		11	.09
12/17/34	15	508	12/1/34–12/17/34		14	.07
12/17/34	11	616	12/4/34–12/17/34		12	.07
12/18/34	56	1,493	12/1/34–12/18/34		15	.22
12/18/34	50	3,200	12/3/34–12/18/34		14	.45
12/18/34	43	2,567	12/4/34–12/18/34		13	.33
12/19/34	50	3,335	12/4/34–12/19/34		14	.47
12/20/34	6	384	12/4/34–12/20/34		15	.06
12/21/34	20	470	12/1/34–12/21/34		18	.08
12/21/34	25	1,600	12/3/34–12/21/34		17	.27
Balance carried forward						$5.40

[fol. 2191]

Balance brought forward						$5.40
12/21/34	38	2,256#	12/4/34–12/21/34		16	.36
12/21/34	30	570	12/21/34–12/21/34		1	.01
12/22/34	50	3,200	12/3/34–12/22/34		18	.58
12/26/34	10	520	12/4/34–12/26/34		19	.10
12/26/34	10	610	12/18/34–12/26/34		7	.04
12/27/34	76	2,395	12/1/34–12/27/34		22	.53
12/27/34	12	676	12/4/34–12/27/34		20	.14
12/27/34	2	122	12/18/34–12/27/34		8	.01
12/28/34	25	1,600	12/3/34–12/28/34		22	.35
12/28/34	27	1,848	12/4/34–12/28/34		21	.39
12/29/34	15	420	12/1/34–12/29/34		24	.10
12/31/34	248	8,064	12/1/34–12/31/34		25	2.02
12/31/34	25	1,600	12/3/34–12/31/34		24	.38
12/31/34	103	6,775	12/4/34–12/31/34		23	1.56
12/31/34	5	305	12/18/34–12/31/34		11	.03
Bal. on Hand						
12/31/34	1,094	29,828	12/1/34–12/31/34		25	7.46
	62	3,968	12/3/34–12/31/34		24	.95
	284	18,831	12/4/34–12/31/34		23	4.33
	43	2,063	12/18/34–12/31/34		11	.23
	211	4,009	12/21/34–12/31/34		8	.32
53 packages marked during December at 1¢ ea.						.53
						$25.82

[fol. 2192] To compensate the terminals for the added costs of making many small deliveries, such as are here involved, the following increases have been made in the "receiving and delivery" charge on certain items:

Item No.	Increase in Receiving & Delivery Charge per Ton
2. Canned goods, N. O. S.—Inbound	15¢
5. Cereals, prepared, in cases	15¢
6. Excelsior, wood, in bales	25¢
11. Flour, grain, in sacks	15¢
15. Paper, toilet, in cases	20¢

To take care of goods which lie over one, two or three days beyond the free time period and which are not placed upon a demurrage account, a penalty demurrage charge of five cents per ton is recommended to run until such time as the shipper shall declare his goods for storage. If the goods are not so declared after five days, the goods shall automatically go on a fifteen-day period wharf storage basis.

Upon the basis of the facts at hand, the authors believe the charges recommended herein are within the ability of the cargo to pay. The greatest increases are on certain fertilizers which have been enjoying a rate of 15 cents per month although the cost to the terminals for storage has been approximately 50 cents per month. As those fertilizers generally stored at the terminals range in value from $30 to $45 per ton, it appears that the industry should be able to bear a compensatory rate.

[fol. 2193] It is similarly true with other items. It is to be noted that on several of the representative commodities, rates will be reduced rather than increased, particularly after the expiration of sixty days.

From the standpoint of competition, two factors appear. The first is competition with the public warehouses. In this instance the latter may have some advantages with regard to floor space costs, but they are at an extreme disadvantage concerning handling costs. Whereas in the case of warehousing the goods must be trucked from point of rest on the dock to the warehouse, unloaded, handled from the receiving platform to point of storage; then, upon leaving, be re-handled to the delivery platform and loaded to truck or rail car for final movement to destination. At the ter-

minals the sole handling is that of high piling or the minimum amount of movement to prevent interference with stevedore operations. With these qualifications, the stevedores drop the goods at their proximate place of storage and they lie there until the consignee, or his agent, picks them up directly from the pile. Under such conditions warehouse charges are not a limiting factor in increasing demurrage charges to a compensatory level.

A second competitive factor is that of the private plant warehouses. On inbound tonnage this is an unimportant factor for the handling costs (as explained above in the instance of warehouse competition) make it economically desirable to distribute directly from the terminal.

[fol. 2194] On outbound movements the terminals are in direct competition with private plant storehouses. The goods move from these storehouses to the dock. It is not reasonable to believe that the terminals, with their expensive waterside facilities, can compete with such storage at points of origin, nor should they attempt to do so.

To construct facilities to handle such movements and then to reduce rates to undercut plant storehouse expenses is simply to pile up heavy annual carrying charges that must be passed on to other users of the terminal services.

However, at certain seasons of the year such private storehouses may be inadequate to accommodate the load and it is uneconomical to construct plant extensions which will be used solely for peak season overflows. In such an instance the shipper can well afford to pay a compensatory rate at the terminals for storage services received and, if competition is to be the factor, the competitive rates should be aimed at this tonnage only.

The charges recommended herein satisfy the twofold need laid down earlier in this chapter. It will raise the charges to a compensatory level and it will require each commodity to compensate for the expenditures it has occasioned.

[fol. 2195] Part III—Supporting Data

[fol. 2196] Chapter I

Determination and Allocation of Terminal Costs:

The purpose of the allocations made herein is to determine the cost of rendering the respective services appearing in the wharfinger tariffs.

An examination of these tariff items indicates that certain tariff charges provide compensation to the terminal for the rendering of certain labor services or operations, such, for example, as those embraced in the definition of service charges.

Other charges are for compensation to the terminal for the use and provision of certain facilities (structures and/or equipment), such, for example, as the dockage charge for the use of the slip and wharf by the vessel, and the toll charge for the use of the transit sheds by the cargo.

Still other tariff items compensate the terminal for the provision of both labor services and the use of certain facilities or equipment. Such is the charge for wharf demurrage where the use of both labor and facilities is involved.

The task becomes that of measuring the use of (1) labor, and (2) facilities in the performance of the respective tariff services; and properly assigning such costs according to a just and reasonable interpretation of the tariff.

Care was taken to avoid (except in the instance of tariff and solicitation and allied items), the use of the gross revenue basis in making allocations as it was felt that (1) such basis did not truly reflect costs and that (2) the existing relationship of revenue items might be found at [fol. 2197] fault in this investigation and changed for the future.

The cost data was taken from the companies' ledger accounts after the latter had been tested for their accuracy by periodic spot checks against their bills.

In all previous cost studies no attempt was made to go beyond direct dock labor with some arbitrary allowances for office overheads, etc. However, these unallocated overhead items have amounted to 50 per cent or more of all terminal costs. To ignore this item was to largely nullify the effectiveness of a general cost study of the nature here involved. Hence no pains were spared to charge off every item of cost upon the basis outlined herein. In order that any errors of fact or judgment might be eliminated or reduced to a minimum, the following explanation of allocations was submitted to fifteen representatives of port bodies, marine terminals, steamship lines and shippers on the Pacific Coast for criticism, and their views and sug

gestions have been given careful consideration in the breakdown of terminal costs.

The costs used herein are for the year 1935 (except where average expenditures for several years were required). The severe labor troubles and strikes of 1934 and the lower wage scales in effect prior to this date made the use of such periods inadvisable. An explanation of the method of allocating the costs follows:

[fol. 2198] *Index of Expense Items Whose Allocation is Herein Explained*

1. Direct Labor Costs of:
   - Checking Cargo,
   - Assembling Freight,
   - Making out Ship's Papers,
   - Car loading and unloading,
   - Handling and High Piling Wharf Demurrage Cargo,
   - Handling Lines,
   - Stencilling, Weighing, etc.
2. Executive and Administrative Officers.
3. Directors' Fees.
4. Traffic Department and Solicitation.
5. Advertising.
6. Association Dues and Donations.
7. Accounting and Billing Expense.
8. Timekeeper.
9. Messengers.
10. Watchmen.
11. Office Janitor.
12. Cleaning Sheds and Docks.
13. Recoopering.
14. Recoopering, Sale of Service.
15. Vacation, Holiday and Sickness Cost.
16. Telephone and Telegraph.
17. Dock Lights.
18. Office Lights, Heat and Water.
19. Power.
20. Water Used on Dock for Drinking and Sanitary Purposes Only.
21. Water Sold, Cost of.

[fol. 2199] 22. Miscellaneous Supplies.
23. Service to Office Machines.

24. Dock Tractors—Gasoline & Oil.
25. Stationery and Printing.
26. Postage.
27. Miscellaneous Expenses.
28. Bad Debts.
29. Legal Services.
30. Tariff Services.
31. Terminal Association Expense.
32. Absorptions.
33. Claims.
34. Insurance Premiums.
35. Employee Group Insurance.
36. Rental of Equipment.
37. Car Demurrage.
38. Strike Expense.
39. Transfer of Cargo to Other Terminals.
40. "No Berth" Expense.
41. Maintenance of Facilities.
42. Dredging.
43. Depreciation.
44. Taxes.
45. Return on Rate Base:
    (A) Land.
    (B) Improvements—Wharves, Buildings, Trackage.
    (C) Working Capital.
    (D) Organization Expenses.

[fol. 2200] Explanation of Allocations

1. *Direct Labor Cost:*

Consists of the direct labor engaged in checking cargo to or from shippers and consignees or to and from the vessel, making out ship's papers, car loading, car unloading, handling and high piling wharf demurrage freight, handling lines, assembling of freight for delivery to vessel, stenciling, strapping, weighing, etc.

(a) *Principle of Allocation:*

Charge to those tariff services in the performance of which the labor was expended.

(b) *Application of Principle:*

Determine allocation upon basis of the time sheets or payroll records showing nature of work performed by each employee.

(c) *Examples:*

(3) Charge the direct labor of car loading and unloading to the Car Loading and Car Unloading accounts;

(2) Charge the labor of handling, consolidating, high piling and delivering wharf demurrage to the wharf demurrage or storage account.

(3) Charge the labor for stencilling, strapping, etc., to the stencilling, strapping and similar accounts.

(4) Charge the labor of checking cargo to and from the vessel or to and from the shippers and consignees to Service Charges (paid by the vessel).

If, however, such cargo remains in the hands of the terminal beyond the free time period and thus passes into the [fol. 2201] status of wharf demurrage (or storage) cargo, the subsequent cost of checking or delivering it to the consignee is chargeable against the wharf demurrage (or storage) account. This is upon the principle that the carrier's responsibility for recompensing the terminal for such clerical expenses ceases upon the expiration of the free time period.

(5) Charge the clerical labor of making out ship's papers, dock receipts, pile tags, etc., to "Service Charges."

(6) Where a single labor operation is performed on behalf of two tariff services, the cost of such labor should be prorated equally between the tariff items; i.e., the labor of checking cargo to rail cars is a function of both the service charge (paid by the vessel) and of car loading (paid by the shipper, consignee or rail carrier). The checker's time should be distributed equally to each service.

2. *Executive and Administrative Officers:*

Consists of salaries.

(a) *Principle of Allocation:*

Allocate on "basis of use" of officers' time devoted to respective tariff services.

(b) *Application of Principle:*

This allocation based on actual experience of each individual officer or executive in supervising the performance of the various services under his jurisdiction.

(c) *Example:*

Assume an officer's time is devoted as follows:

Dock-cargo operations—40%.
Solicitation of traffic—40%.
Office administration—20%

[fol. 2202] First determine the total composite allocations of (1) all dock labor; (2) traffic and solicitation expenses; and (3) office payrolls; and then charge the respective portions of the executive's salary accordingly.

3. *Directors' Fees:*

Consists of the fees paid members of the Board of Directors.

(a) *Principle of Allocation:*

Allocate in accordance with the directors' time devoted to the respective tariff services.

(b) *Application of Principle:*

Such time prorated upon same basis as executive and administrative officers' time is prorated. An alternative is allocation upon the basis of all expenditures for the year.

4. *Traffic Department and Solicitation:*

Consists of traffic manager's salary, payroll of traffic department, salaries of solicitors, their traveling and solicitation expenses.

(a) *Principle of Allocation:*

The cost basis cannot be used.

Assume that a solicitor spends sixty minutes securing shipment of goods upon which the terminal earns 40 cents per ton in service charges, 15 cents per ton in tolls, and 2 cents per ton in car unloading. Upon no factual basis can the solicitor's salary be concretely allocated upon the pro

portion of his time spent in selling these tariff services. His solicitation is not based upon such items.

[fol. 2203] (b) *Application of the Principle:*

Charge off upon the basis of the gross revenue received by the terminal from the respective tariff services.

(c) *Example:*

If 20% of the terminal's revenues are received from tolls and 30% from car loading, 20% of the traffic and solicitation expenses are chargeable to tolls and 30% to car loading, etc., etc.

5. *Advertising:*

Consists of advertisements carried in local trade journals, newspapers and traffic club periodicals.

(a) *Principle of Allocation:*

Allocate as per allocation of Traffic and Solicitation.

6. *Association Dues and Donations:*

Dues and business donations consist of memberships in and contributions to such organizations as the local Chamber of Commerce, local industrial associations and transportation clubs.

There are also charity donations consisting of those gifts to local community chests and charitable organizations which have no relation to the development of traffic and business.

(a) *Principle of Allocation:*

Allocate dues and business donations as per allocation of Traffic and Solicitation.

Charge charity donations to Profit and Loss—not includable in costs.

[fol. 2204] 7. *Accounting and Billing Expense:*

Consists of the general office salaries and expense of accounting, billing, bookkeeping, auditing, etc.

(a) *Principle of Allocation:*

Charge off upon the basis of the amount of the above office expense necessary to the performance of each of the tariff services.

(b) *Application of the Principle:*

The accounting expense is roughly proportionate to the sums of money for which an accounting is required. An accounting is required of all funds received from each tariff service rendered and for all funds expended for direct and overhead costs in the performance of each of these services. Hence, allocate the accounting and billing costs upon the basis of the amount of revenues received and moneys expended in the performance of each tariff service. There is an exception in the case of wharf demurrage and pool car services where the smallness of the revenues involved (and the amount of detail demanded) requires a disproportionate amount of accounting and billing expense per dollar of revenue received. Hence, in the case of these two services double weight is arbitrarily accorded per dollar of revenues and expenses handled.

An alternative to the above mathematical allocation is an allocation upon the same principle, but based upon the judgment of the chief accountant.

(c) *Example:*

Determine a weighted average of the percentage of total [fol. 2205] revenues derived from each tariff item and the percentage of total expenses chargeable to such item. Charge off the accounting expenses accordingly.

8. *Timekeeper—Salary:*

(a) *Principle of Allocation:*

Allocate upon basis of the proportion of his time devoted to the respective tariff services.

(b) *Application of Principle:*

Allocate his time upon the basis of the composite allocation of the total payroll over which he has charge. If a portion of his time is given over to other duties, such as the keeping of car loading records, such time should be charged

directly to the service concerned. In this instance it would be car loading.

9. *Messengers:*

Consists of the salaries and commutation expenses of messengers engaged in the delivery of papers, samples, etc., throughout the Bay district.

(a) *Principle of Allocation:*

Allocate upon basis of the use of messenger service in the performance of the various tariff services.

(b) *Application of Principle:*

Estimate the proportion of messenger service required for each tariff service and so apportion it.

10. *Watchmen:*

Consists of the expense of watchmen in the protection of: (1) all facilities such as piers, wharves, transit sheds; and [fol. 2206] (2) the cargo contained therein.

(a) *Principle of Allocation:*

Allocate upon the basis of the watchmen's time devoted to: (1) the protection of the above mentioned facilities; and (2) the protection of the cargo.

The charge to facilities must be further allocated to those tariff items which are responsible for, or which require, the use of such facilities.

The charge to cargo must be further allocated upon the basis of the volume of tonnage so protected; i.e., allocated to in-transit cargo, wharf demurrage cargo, etc.

(b) *Application of Principle:*

Assume 50% of watchmen's protection is chargeable to the facilities and equipment and 50% chargeable to the cargo. This split is upon the basis of a judgment estimate. It assumes the time is equally divided between the protection of the structures and equipment on the one hand and cargo on the other.

The amount allotted to structures is again segregated to the apron, wharf and sheds upon the basis of an arbitrary estimate of the time devoted to each on his rounds. His

time upon the apron, for example, may be finally charged 60% to the vessel in the form of dockage and 40% to the cargo in the form of tolls. His time in the typical shed may be finally charged 12% to dockage, 68% to service charges and 20% to wharf demurrage. (See Part I, Chapter III for the allocation of the apron and shed to the vessel and cargo.)

The 50% charged to cargo is again segregated upon the basis of the floor space occupied by in-transit cargo, wharf [fol. 2207] demurrage cargo and warehouse storage, if any. The costs would then be charged off respectively to service charges, wharf demurrrage and warehousing.

11. *Office Janitor:*

Consists of the expense of janitor service in the general offices.

(a) *Principle of Allocation:*

Allocate upon the basis of the time devoted to the performance of the tariff services.

(b) *Application of Principle:*

Allocate upon a composite basis representing the total allocation of the salaries of the general office staff which receives the janitor service. Where the staff is sufficiently large to permit one or more desks to be devoted to steamer records, car unloading records, pool car assembling, etc., the janitor expense may, for such proportional parts of the office, be allocated upon the basis of the desk space devoted to each of these services.

12. *Cleaning Sheds and Docks:*

Consists of labor and water used in cleaning up the transit sheds and docks after the movement of cargoes.

(a) *Principle of Allocation:*

Charge to the tariff items which directly or indirectly embraced cargo handling, and thus were responsible for the cleaning.

(b) *Application of Principle:*

Allocate upon the basis of a judgment as to the amount [fol. 2208] of handling performed on in-transit cargo, wharf

demurrage cargo, cargo loaded or unloaded to or from rail cars, etc. The cleaning necessitated by the movement of in-transit cargo by the terminal in assembling operations (as well as stevedore operations) is charged to service charges; the cleaning after wharf demurrage operations is charged to wharf demurrage, etc.

13. *Recoopering (At Terminal Expense)!*

Consists of the expense of labor and materials for recoopering of in-transit cargo. Does not include labor sold for recoopering.

(a) *Principle of Allocation:*

Charge to the tariff service which by definition embraces the receipt of cargo from the shipper and its delivery to the vessel or vice versa, its receipt from the vessel and delivery to the consignee. The recoopering of cargo damaged during this period of handling should be charged to the tariff item covering the performance of these receipt and delivery services.

(b) *Application of Principle:*

Charge to service charges if cargo is within free time period. If cargo recoopered at terminal's expense while on demurrage, charge to demurrage account.

14. *Recoopering—Sale of Service:*

Consists of the recoopering services sold upon the basis of per package, per case or at direct cost plus 20%. Charge such cost to the shipper or consignee for whose account the work was performed. (Treated similarly to the sale of [fol. 2209] stencilling, weighing and strapping services).

15. *Vacation, Holiday and Sickness Cost:*

Allocate upon the same basis as the labor cost of the men who are off with pay on account of vacation, holidays or sickness. (Also includes cost of pensioning one man in the instance of one terminal.)

(a) *Principle of Allocation:*

Allocate to the tariff service in the performance of which the labor was expended.

(b) *Application of Principle:*

Allocate upon the same basis as the labor cost of the man replaced. Charge off pensions upon a composite basis representing the allocation of all labor expense.

16. *Telephone and Telegraph:*

Consists of telephone and telegraph bills.

(a) *Principle of Allocation:*

Allocate upon the basis of the proportionate use of the telephone and telegraph in the performance of the respective tariff services.

(b) *Application of Principle:*

Such proportionate use based upon the judgment of the office management as to the use and need of telephone and telegraph service in connection with the respective tariff items.

17. *Dock Lights:*

Consists of the lights on the dock used for watchmen, for night stevedoring of vessels, for night car loading or unloading, for night receipt of cargo from shippers or delivery [fol. 2210] to consignees, etc.

(a) *Principle of Allocation:*

Allocate upon the basis of the use of the lights required in the performance of the above services.

(b) *Application of Principle:*

Determine the relative amount of electricity used in performing these services (based on estimates). Amount chargeable to the watchmen should be allocated as per watchmen's salaries; amount chargeable to stevedoring and receipt of cargo from shippers charged to service charges; amount used for night car loading charged to car loading, etc.

18. *Office Lights, Heat and Water:*

(a) *Principle of Allocation:*

Allocate upon the basis of the consumption of light, heat and water in the provision of the tariff services.

(b) *Application of Principle:*

Allocate as per total salary allocation of the staff occupying the offices and necessitating the lights, heat and water.

19. *Power:*

Consists of the charge for electrice current used for cranes, car pullers, electric heaters, current sold vessels and minimum standby charges on electrical equipment.

(a) *Principle of Allocation:*

Charge to the tariff services in the performance of which the current and electric equipment was used.

[fol. 2211] (b) *Application of Principle:*

Determine power used and standby charges upon basis of meter readings, the h. p. rating of the respective pieces of equipment, or upon a judgment estimate. Charge cost of power sold vessels to the proper tariff item providing for such sale.

20. *Water Used on Dock for Drinking and Sanitary Purposes Only:*

(a) *Principle of Allocation:*

Charge to the services in the performance of which it was consumed.

(b) *Application of Principle:*

Charge one-half to ship stevedores use (i. e., charge to service charges); charge one-half to terminal dock labor, allocating it per allocation of total dock payroll.

21. *Water Sold, Cost of:*

(a) *Principle of Allocation:*

Charge to tariff service for which cost was incurred.

(b) *Application of Principle:*

Charge to water sold.

22. *Miscellaneous Supplies:*

Consist of paper towels, electric light globes, paper sheeting, etc.

(a) *Principle of Allocation:*

Allocate according to use in the performance of tariff services.

(b) *Application of Principle:*

Allocate each item per the operations in which it is used; i. e., charge towels as per labor expense, electric light globes [fol. 2212] as per electric current, paper sheeting for protection of demurrage cargo to wharf demurrage, etc.

23. *Service to Office Machines:*

Consists of repair service to typewriters, adding machines, etc.

(a) *Principle of Allocation:*

Allocate upon basis of use of such machines in the performance of the respective tariff services.

(b) *Application of Principle:*

With the service cost known for each machine or group of machines, the machines may be allocated to the Traffic Department, to the Acounting Department, to the office staff engaged in making out the ship's papers, etc. The service costs may then be allocated as the respective departments are allocated, or the servicing costs may be allocated as per the salary allocation of all office staffs making use of the machines in question.

24. *Dock Tractors—Gasoline and Oil:*

(a) *Principle of Allocation:*

Allocate upon the basis of the use of the tractors in performing the services incidental to the various tariff items.

(b) *Application of Principle:*

Charge to each tariff service upon the basis of the estimated proportion of tractor time devoted to that service. Estimates provided by dock superintendents and timekeepers as to assignment of tractors, to car loading, assembling freight, etc.

[fol. 2213] 25. *Stationery and Printing:*

Consists of the cost of such printed forms as invoices, statements, dock receipts, pile tags, steamer manifests, and all the other necessary terminal forms and stationery.

(a) *Principle of Allocation:*

Allocate upon the basis of the need and use of such stationery in the performance of the various tariff services.

(b) *Application of Principle:*

Such use is to be measured through an estimate of the respective quantities of printed forms, papers and documents necessary and used in providing the various services. Estimates provided by office managers and purchasing agents based upon forms essential to vessel work, demurrage, car loading, solicitation, etc.

26. *Postage:*

(a) *Principle of Allocation:*

Allocate upon the basis of the proportionate use of postage in the performance of the respective tariff services.

(b) *Application of Principle:*

Such proportionate use based upon judgment as to need for and use of mail in connection with each tariff item. Approximate postage used for solicitation purposes, if known, may be charged off upon same basis as solicitation expenses are allocated.

27. *Miscellaneous Expenses:*

Consist of indemnity bonds, hospital expenses for clerks, dinner money for clerks, auto license plates on solicitors' [fol. 2214] cars, safe deposit box rent, etc., etc.

(a) *Principle of Allocation:*

Allocate on the basis of the use of labor and facilities in the respective tariff services.

(b) *Application of Principle:*

Charge auto plates as per solicitation, safe deposit box rent, and indemnity bonds as per accounting and billing, dinner money as wages of clerks involved, etc.

28. *Bad Debts:*

Consist of uncollectible accounts.

(a) *Principle of Allocation:*

Allocate upon the basis of the tariff items in which the losses occurred.

(b) *Application of Principle:*

Such tariff items determined by an examination of the uncollectible accounts for four to five years previous and charged to those services in which bills proved uncollectible.

29. *Legal Services:*

Consist of sums paid for legal counsel.

(a) *Principle of Allocation:*

Allocated upon basis of legal expenses incurred in connection with each tariff service.

(b) *Application of Principle:*

Such expenses measured by an examination of the subject matter of the legal proceedings in which terminal involved for several years previously and costs charged to the tariff services found so involved. Might also be allocated upon [fol. 2215] the same basis as executives' salary.

30. *Tariff Services:*

Consist of cost of tariff publication; i.e., terminal's tariff printing bills and services of rate experts. (This service is provided by the Terminal Association).

(a) *Principle of Allocation:*

Allocate upon basis of tariff expert's time and the printing expense chargeable to each tariff service.

(b) *Application of Principle:*

Such time and expense measured in terms of pages of tariff data (originally issued and reissued) carrying each tariff service.

31. *Terminal Association Expense:*

Consists of the respective terminal's share of the expenses of maintaining the Terminal Association, but excluding those expenses chargeable to tariff services allocated above. The balance here prorated consists of the costs of the Association of labor negotiations and adjustments.

(a) *Principle of Allocation:*

Allocate in accordance with the time spent in negotiating with the labor groups performing various terminal services.

(b) *Application of Principle:*

Such cost spread over the direct labor payroll involved in each tariff service. This is upon the assumption that the number of labor negotiations is proportional to the payroll engaged in providing each tariff service.

[fol. 2216] 32. *Absorptions:*

Consist of expenditures incurred in absorbing various transportation charges, in whole or in part, for the purpose of equalizing transportation charges through other terminals or ports.

(a) *Principle of Allocation:*

Allocate upon basis of tariff revenues derived from tonnage thus attracted.

(b) *Application of Principle:*

Determine such revenue upon assumption that tonnage so attracted is a cross-section of all tonnage handled. Hence, allocate upon the basis of the relation of total revenue received from each tariff service to all gross revenue.

33. *Claims:*

Consists of claims paid as a result of loss or damage to cargo.

(a) *Principle of Allocation:*

Allocate to the respective tariff service in the performance of which the loss or damage arose. For example, if

claim was paid against goods on wharf demurrage, charge the expense to wharf demurrage.

(b) *Application of Principle:*

Determine tariff items responsible for claim upon examination of each individual claim for several years previous.

34. *Insurance Premiums:*

Consists of premiums for insurance covering fires, earthquakes, employee compensation, etc.

[fol. 2217] (a) *Principle of Allocation:*

Allocate the insurance premiums against the tariff items which directly or indirectly necessitate the carriage of such insurance.

(b) *Application of Principle:*

If the insurance is against a facility, allocate the premiums to the services using or requiring the use of such facility. For example, fire insurance covering wharves and sheds is allocated to the vessel or to the cargo upon the basis of the vessel's or cargo's use of such facility. (See breakdown of the use of wharves, sheds and land areas—Item No. 42). The cost of fire or theft insurance on transit cargo is charged to service charges. Similar insurance on demurrage or storage is charged to wharf demurrage or storage.

If the insurance covers labor (Accident Compensation, Federal and State Unemployment and Old Age Pensions, etc.) allocate the premium as the payroll of the group so covered is allocated.

35. *Employee Group Insurance:*

Consists of life insurance premiums covering fatalities away from the job.

(a) *Principle of Allocation:*

Allocate to the tariff services which require the use of the labor so protected.

(b) *Application of Principle:*

Allocate upon the same basis as the payrolls of the insured group are allocated.

[fol. 2218] 36. *Rental of Equipment:*

Consists of the rental by the terminals of miscellaneous types of equipment to facilitate or cheapen the cost of rendering certain tariff services such as car loading of steel sheets, strapping, etc.

(a) *Principle of Allocation:*

Allocate to the tariff service in which the equipment is used.

(b) *Application of Principle:*

Charge off as an expense to the tariff service concerned. For example, charge rental cost of strapping machines to strapping.

37. *Car Demurrage:*

Consists of demurrage charges paid upon cars engaged in car loading or car unloading.

(a) *Principle of Allocation:*

Allocate to tariff service in the performance of which the charge was incurred.

(b) *Application of Principle:*

Charge to car loading and unloading respectively; upon basis of demurrage accrued in each. However, when unloading delays arise from lack of shed space to accommodate rail-borne cargo, charge to toll. This is upon the principle that such use of cars constitutes a temporary extension of shed space which the cargo, upon payment of a toll, is entitled to.

38. *Strike Expense:*

Consists of costs of additional watchmen and reshipping [fol. 2219] certain cargoes to other terminals for handling.

(a) *Principle of Allocation:*

Charge off upon same basis as similar items are charged during non-strike periods.

(b) *Application of Principle:*

Charge off extra watchmen as the salaries of regular watchmen are allocated. Charge reshipping of cargo to service charges.

39. *Transfer of Cargo to Other Terminals:*

Transfer of cargo to other terminals or ports when insufficient tonnage is on hand to attract the vessel. Consists of costs of barging, draying or transferring cargo; costs incident to transfer of cargo during "hot cargo" strikes, and marine insurance on barged cargo.

(a) *Principle of Allocation:*

Allocate to the tariff item which by definition embraces the function of receiving goods from shippers and delivering them to vessels and to the tariff service (pool car assembling) which in its nature from time to time requires such transfer of cargo.

(b) *Application of Principle:*

Charge to Service Charges except in the case of pool car shipments which should be charged to the cost of pool car assembling.

40. *"No Berth" Expense:*

Consists of the cost of paying labor overtime when vessel delays are occasioned by the terminal or when the load-
[fol. 2220] ing is expedited at the request of the terminal and the cost of shifting the cargo upon failure to provide the scheduled berthing space when vessel arrives, but cannot wait.

(a) *Principle of Allocation:*

Charge to the tariff item which by definition embraces the "arranging of berth for vessel," or the delivery of cargo to the vessel.

(b) *Application of Principle:*

Charge to Service Charges.

41. *Maintenance of Facilities:*

Consists of the cost of repairs to wharves, transit sheds, fender lines, office buildings, etc. Where the costs were

available, a complete analysis was made over the life history of the units. Expenses were segregated for fender lines, aprons, sheds, offices, etc. Care was taken that no item was included which was properly chargeable to the depreciation reserve or to additions and betterments.

(a) *Principle of Allocation:*

Charge to those tariff services in the provision of which the facility was required.

(b) *Application of Principle:*

(See Part I, Chapter III, for allocation of facility costs between vessel and cargo.

42. *Dredging:*

Consists solely of maintenance dredging necessary to maintain the necessary depth of channel. Did not include original dredging costs which were assumed to have been [fol. 2221] embraced in the valuation placed upon the land, i.e., the land values taken were those upon the improved property "after all original dredging." All dredging costs incurred over the full life of the terminal were analyzed and the average annual cost for maintenance dredging determined. As explained in Part II, Chapter III, no dredging costs were included beyond pier-head lines or beyond a line 75 feet out from quay wall structures.

(a) *Principle of Allocation:*

Charge to the tariff service in the provision of which the expenditure was incurred.

(b) *Application of Principle:*

Charge to vessel, i.e., dockage. (See Part II, Chapter III.)

43. *Depreciation:*

Depreciation was charged off upon a 5 per cent (5%) sinking fund basis, wherein equal annual payments are set aside out of operating revenues which, compounded at 5 per cent interest, will accumulate to a sufficient amount at the end of the service life of the unit to replace it at its original cost. This method obviated the need for deter-

mining the remaining service lives for each unit of pro-
erty, a prerequisite to the application of the straight li
method of depreciation. The depreciation accounts of th
companies were of little value as there proved to be too
much variation between the rate of "write-off" and th
expected lives of the respective units.

[fol. 2222] It was necessary, of course, to establish a
reasonable expected service life for each unit of property
This was done by an examination into the life history o
each facility, shed, wharf or other building at each ter
minal, as well as the experiences at San Francisco, Oaklan
and Los Angeles. The experiences of port authorities wit
each type of facility and each type of construction were
noted. On the newer type of concrete piling, insufficien
time has elapsed to provide a conclusive test as to it
possible service life. However, judgment estimates were
obtained from many authorities and these were duly
weighed.

As a result, the following expected minimum and maxi
mum service lives were determined. The service life use
for this study is also noted.

Service Lives

Item	Estimated Service Life		Service Life Used for Depreciation Purposes
	Minimum Years	Maximum Years*	
Wharves:			
Untreated piling	2	5	Not in use
Creosoted wooden piling	20	30	20
Concrete capped wooden piling	30	40	30
Concrete piles	35	50 plus	40
Sheds:			
Corrugated iron	20	25	20
Wooden	30	50	35
Brick	—	50 plus	35
Concrete	—	50 plus	35
Dock Equipment (tractors, trailers, etc.)	4	10	8
Furniture and Fixtures	—	—	10
Automobiles	—	—	4

* Assuming ideal conditions for installation and maintenance.

[fol. 2223] A brief discussion upon the subject of the lif
of piling is desirable. The estimated maximum lives show
above are based upon an expected high standard of work
manship in the construction of the facilities with full ad
vantage being taken of all known technical improvement

At the same time there was noted creosoted pile failure
arising from injuries or cuts in the pile surface while i

was being installed; failures from the sinking of a shallow hard pan strata into which piles have been driven; failure of concrete-capped piles from entrance of marine borers at the mud line; deterioration of full concrete piles due to impregnation of salt water and the rusting away of the steel reinforcing permitting the pile to chip away, thus sharply reducing its cross section; failure of concrete piles from insufficient tamping during construction or the use of an unsatisfactory mix; and even failures of concrete piles for no apparent reason whatsoever.

While the ingenuity of the engineers has gone far to overcome the vagaries of nature, and all or most of the problems named above have been apparently overcome in new construction today, yet it must further be noted that a high grade of workmanship is not always obtained; that many early concrete pilings now in use have required heavy maintenance long before the expiration of their expected service lives; that the oldest concrete pile in the San Francisco Bay area is only twenty-five years old at present; and that allowances must be made for such economic factors as obsolescence, the change in the flow of traffic, and similar unforeseen contingencies.

[fol. 2224] In view of these factors it is concluded that for the purposes of this study the expected service lives on creosoted, concrete-capped, and full concrete pilings should not be held to exceed twenty, thirty or forty years respectively.

Corrugated iron sheds on salt water rust rapidly, particularly where the overlapping metal cannot be reached by protective paint. Even twenty years cannot be expected unless there is proper maintenance.

Brick and concrete wharf sheds will theoretically last fifty years and indeed for an indefinite period beyond. The limiting factor, however, is that of obsolescence which is here held to become 100 per cent effective on wharf sheds in not over thirty-five years. In fact some sheds built within the past ten years are today partially obsolete because of their inability to adequately accommodate the truck.

No salvage values were allowed as the cost of removal of the structures, particularly wharves, may easily exceed all revenues from salvage.

Dock equipment, consisting of jitneys, trailers, electric lift trucks, gravity conveyers, strapping machines, skids, high-piling machines, etc., is usually written off in a four-year period; but an examination of the life history of the major items indicated that they were still in good condition after six, eight or even ten years. Many of these items are comparable to the farmer's axe—it has had two new heads and three new handles, but it is still the same axe. Adequate and proper maintenance apparently can do much to prolong the life of this equipment. An eight-year service life was held to be reasonable. Automobiles were found [fol. 2225] to be turned in after three years, with a trade-in allowance received. A four-year period without trade-in value was believed reasonable for this study.

(a) *Principle of Allocation:*

Charge the depreciation upon each wharf, shed, facility or piece of equipment to those tariff services in the performance of which the unit or item was required.

(b) *Application of the Principle:*

For allocation of wharf and shed depreciation, see Part 1, Chapter III.

Depreciation on dock equipment was allocated to the demurrage, car loading or other services upon the basis of its use in such services.

Depreciation on automobiles was charged to the service which required its use. The preponderance of automobile usage came from solicitation.

44. *Taxes:*

Consist of property, capital stock and income taxes.

(a) *Principle of Allocation:*

Charge to the tariff services, the provision of which resulted directly or indirectly in the tax being incurred.

(b) *Application of the Principle:*

(1) Spread property taxes over the respective facilities upon the basis of their assessed values. For allocation of taxes on facilities, see Part I, Chapter III.

[fol. 2226] (2) Allocate capital stock tax upon that composite basis representing the final distribution of the plant investment between the major services performed.

(3) Income tax: Distribute upon the basis of gross revenues.

45. *Return on Rate Base:*

The return upon the investment is here interpreted as the cost of capital. It is the amount available for interest, dividends and surplus.

The rate should be sufficient to attract capital to the industry and should be similar to that for similar undertakings attended by corresponding risks and uncertainties. The requirements in this have been summed up by the United States Supreme Court as follows:

> "The return should be reasonably sufficient to assure confidence in the financial soundness of the utility and should be adequate, under efficient and economical management, to maintain and support its credit and enable it to raise the money necessary for the proper discharge of its public duties."
>
> (Bluefield Waterworks and Improvement Company vs. Public Service Commission, 262 U. S. 679.)

In recommending a rate of return in accordance with the above mandate, the authors took into consideration the following points:

(1) The wharfinger business, although subject to State regulation, is not protected from public and private competition and for this reason it may be grouped among the more hazardous of the public utility enterprises.

[fol. 2227] (2) With a high degree of labor cost to total cost, it is peculiarly vulnerable to labor troubles. The past two years' experience has indicated this.

(3) There has been a rapid change in the character of the East Bay tonnage in recent years from bulk to general cargo, the latter being less profitable because of the higher labor costs.

On the other hand, it is to be noted that;

(1) The private terminals have in general been able to successfully withstand the competition of public port bodies.

(2) The terminals have been able to make long term bank loans at rates substantially under the 7 per cent herein recommended.

(3) The rate of return available on money placed for investment has declined on the average between one and two per cent in recent years.

(4) Since 1932 the private terminals have enjoyed a small but steady increase in traffic with an increase for the first quarter of this year over last of better than 10 per cent. With approximately 40 per cent of their costs fixed, they are in a position to benefit from such increases if they continue. The present trend in the volume of all business activity is upward.

(5) There has been no apparent lack of capital attracted to the industry.

[fol. 2228] Upon consideration of these factors, the authors believe that for the purpose at hand a 7 per cent return is reasonable. On property owned by the Port of Oakland, a return of 6 per cent on land and 6½ per cent on improvements was used in accordance with an expression from this body. On property owned by the City of Richmond, a return of 5.3 per cent, which represented the average rate of interest on outstanding harbor improvement bonds, was used. This was in accordance with an expression from this body.

The rate of return must be applied to the rate base. The determination of the latter is outlined below.

A. *Land Values:*

The following land values were used:

(1) *Encinal Terminals:* Sixty cents per square foot upon all areas except certain pieces used for a water tower and for street access upon which a value of twenty cents per square foot was used. Source of value—Valuation Department of the Railroad Commission.

(2) *Howard Terminal:* One dollar per square foot (after original dredging expense). Source of value—Valuation Department of the Railroad Commission.

(3) *Quay Wall Property, Port of Oakland:* (Leased by Howard Terminal). One dollar per square foot, before original dredging expense. Dredging costs capitalized in addition. This property was held to be worth one dollar per square foot before original dredging because of the narrow strip paralleling shore line. Source of value—Port of Oakland.

[fol. 2229] (4) *Parr-Richmond Terminal:*

Outer Harbor No. 1—35 cents per square foot.
Inner Harbors Nos. 2 & 3—40 cents per sq. ft.
San Pablo Dock No. 4—20 cents per sq. foot.
Source of value—estimate of the authors.

The areas included only those used and necessary to the wharfinger service. Areas occupied by shippers, stevedores or other parties, whether under lease or not, were removed from consideration. It is recommended elsewhere in this report that a charge be assessed for the use of such areas. All areas devoted to warehouse use were likewise excluded.

B. *Improvements: Wharves, Buildings, Trackage:*

In accordance with the use of the sinking fund method of depreciation, the original cost of the properties was used as a rate base. A check at one of the major terminals applying the straight line method and a depreciated value based upon the estimated remaining service lives of the major property units showed little change in the results obtained.

A check of the construction costs of new wharf units built within the past two years indicates that the costs differ very little from the costs of similar construction approximately ten years previous when many of the units now in existence were built. The authors conclude that the reproduction costs now are substantially the same as the original costs of the properties.

C. *Working Capital:*

A study of the working capital needs of the terminals indicates that they bill the vessels for service charges and

tolls (collected by the vessel) continuously; the railroads [fol. 2230] on car-loading charges, bi-monthly; and demurrage accounts, monthly.

Sufficient working capital to carry the terminal for a two-week period was felt to be reasonable. This approximated $20,000 at the two major terminals and constituted, roughly, 5 per cent of their annual expenditures. A lesser amount was allowed at the smaller terminals.

D. *Organization Expenses:*

At the major terminals either no record was found of such early expenditures or else they had been largely charged off to operating expenses.

Allocation of the Return:

(a) *Principle of Allocation:*

Allocate the 7 per cent return upon the rate base, (i. e. the 7 per cent return upon land, wharves, sheds, tracks, roadways, equipment, offices, furniture and fixtures, automobiles, etc.) to those tariff services, the performance of which requires the use of such facilities.

(b) *Application of Principle:*

For allocation of return on sheds, wharves, etc., see Part II, Chapter III.

Return on equipment allocated to each tariff service upon the basis of the use of that equipment in providing such services.

Office equipment used exclusively in performance of service charge operations is charged to the vessel; that used for demurrage records, etc., is charged to demurrage; etc. Other equipment and furniture and fixtures was allocated upon same basis as office payroll.

[fol. 2231] *Summary:*

The above items constitute in full the expenses used in the construction of the cost studies which are embraced in this report.

[fol. 2232] Chapter III

Ability of the Vessel to Pay:

The charges recommended herein will result in a total increase against the vessel of from six to seven per cent

or approximately 2.5 cents per ton. Most of this will lie in the assessment of the San Francisco basis of dockage. Whatever upward increases there may be in the service charges are offset by the reduction of 10 cents per ton in the charges against the vessel when it does not call direct but barges.

Concerning the ability of the vessels to pay this average increase of between 2 and 3 cents per ton, note is made of the following:

1. The Intercoastal lines enjoyed an increase of approximately $1.00 per ton, or about 10 per cent, on all major commodities effective October 3, 1935. The added revenues, however, were largely absorbed by labor troubles, wage increases and an increased cost of supplies and materials.

2. The Foreign lines have assessed a handling charge of 40 cents per ton, or an average increase of about 5 per cent, since the first of the year.

3. Pacific Coast-European Conference increased rates effective January 1, 1936, average about 10 per cent on twenty-three important items. The three major commodities, i. e., canned goods, dried fruit and lumber, were not changed.

4. Pacific Straits Conference increases in the general rate level ranged from $1.00 to $2.00 per ton, or an average of about 10 per cent, effective January 1, 1936.

[fol. 2233] 5. Pacific Westbound Conference (Oriental), in the fall of 1934, increased rates about ten per cent. On May 3, 1936, rates on scrap iron and steel, largest commodity in the trade, increased as follows: (per 2,240 pounds)

Compressed scrap	from $3.50 to $4.00
Scrap rail	from $3.75 to $4.00
No. 1 Misc. scrap	from $4.25 to $4.75

6. Pacific Coast-Australasian Conference increased rates on many articles in January and February, 1936. Examples:

Fire arms	from $15.00 to $20.00 W/M
Ammunition	from 17.00W to 20.00 W/M
Lanterns and parts	from 10.00 to 15.00
Glucose, in bags	from 10.00W to 15.00 W/M

7. Pacific Coastwise Conference increases in interstate and intrastate rates in 1935, and in joint rail and water rates in 1936 (April), ranged from a few cents to $1.00 per ton. On account of severe competition, however, many commodities could not stand substantial increases. Carriers in this Conference are in a poor financial condition today.

8. The tonnage handled to and from the vessels calling at the major terminals has increased between 10 and 15 per cent for the first quarter of this year over last year.

9. The American-Hawaiian Steamship Company is one of the few ship lines that periodically issues a public statement concerning its financial position. In terms of services, sailings and tonnage handled, it presents a cross section of the industry. The following statement of its position for both March of this year and for the first quarter of this year should present some indication of the relative position of the industry. It follows:

[fol. 2234] Comparative statement of consolidated Profit and Loss for March 1936-1935 is as follows: (Source—American-Hawaiian Steamship Company, San Francisco, California.)

Item	March		Three Months Ending March 31	
	1936	1935	1936	1935
Operating Earnings	$1,284,522.08	$780,790.59	$3,712,362.24	$2,580,974.10
Operating & General Expenses	1,163,608.40	814,680.60	3,367,063.76	2,674,481.14
Net Profit or Loss from Oper.	120,913.68	(D)33,890.01	345,298.48	(D)93,507.04
Other Income:				
Interest and Dividends received on investments and from other sources	6,413.37	7,050.00	16,503.05	13,100.85
Total Profit or Loss before Depreciation and Federal Income Tax.	127,327.05	(D)26,840.01	361,801.53	(D)80,406.19
Provision for Deprec.	58,189.72	58,250.63	170,985.89	169,367.50
	69,137.33	(D)85,090.64	190,815.64	(D)249,773.69
Non-Recurring Items:				
Profit or Loss on Sale of securities	—	—	3,384.76	(D)17,310.53
Net Profit or Loss before Federal Income Tax	$69,137.33	(D)85,090.64	$194,200.40	(D)267,084.22

D Indicates Loss

The consolidated report of American-Hawaiian Steamship Company and subsidiary companies shows in March 1936 the net profit from operation of $120,913.68 as compared to a net loss of $33,890.01 in March 1935. After allowing for depreciation and after capital gains or losses there was a net profit of $69,137.33 as compared to a net loss of $85,090.64 the year before.

[fol. 2235] For the three months ending March 31, 1936, the net profit from operation was $345,298.48 as compared to a net loss of $93,507.04 for the same period in 1935. The net profit after allowing for depreciation and after capital gains or losses for the three months ending March 31, 1936, was $194,200.40 as compared to a net loss of $267,084.22 for the same period in 1935.

The tonnage handled by this line for 1935 was greater than for any period since 1930.

Upon consideration of all the above factors, the authors express the belief that the increase of between six and seven per cent against the vessels (averaging 2.5 cents per cargo ton) is not beyond their ability to pay.

[fol. 2236]

Chapter IV.

Economic Characteristics of the Marine Terminal Industry:

Throughout this report there has been presented various data dealing with the economic characteristics of the marine terminal industry. For many reasons it appears as desirable to summarize such data. This is done briefly below. The figures given are what can best be termed as "judgment values" drawn from an examination of the cost characteristics of each terminal.

Dockage Charge

(See Pages 46 and 47 for details)

Average Cost:

10.0c per cargo ton.
0.865c per gross registered ton.
1.402c per net registered ton.

Construction of Dockage Charge:

3% operating expenses.
2% office—salaries.

3% general expenses.
15% shed aisles.
77% waterway (slip or basin) and apron costs.

100%

Service Charges
(See Pages 76 and 77 for details)

Direct Costs:	44.0%
Indirect Costs:	
1. Salaries	28.0%
2. General Expenses	28.0%
(Latter includes allowances of approx. 0.9¢ per ton for absorptions, barging, draying and similar costs. The tariff absorption items were allocated over all services upon a gross revenue basis).	
	100.0%

[fol. 2237] Wharf Demurrage
(See Pages 100 and 101 for details)

1. Cost of checking to or from consignee	5¢ per ton
2. Cost of piling second tier and breaking it down	20¢ per ton
3. Cost of piling the third tier and breaking it down	20¢ per ton
4. Cost of miscellaneous moving, shifting and assembling where no high piling is involved	2.5¢ per ton
5. Overhead Costs:	
(a) Non-variable	7.10¢ per ton
(b) Variable	9.17¢ per ton per 30 days

Toll Charges
(See Pages 59 and 60 for details)

1. Average over-all cost for all tons	21¢ to 22¢
2. Average revenues	11¢ per ton
3. Upon breaking down the above average costs the following values were determined:	
(a) The costs of handling bulk cargo loaded direct and not handled through sheds	17¢ to 18¢ per ton

(Assuming such direct loading apron facilities are used to reasonable capacity. Otherwise the costs per ton will be correspondingly higher. Above values based upon direct loaded tonnage constituting 25 to 30 per cent of total tonnage.)

(b) The average toll cost on cargo moving through sheds, after excluding cargo handled direct, averages between 22¢ and 23¢ per ton

[fol. 2238] 4. If a toll charge of 15 cents per ton is assessed upon Inland Waterway and Coastwise trades, as herein recommended, the toll cost to be borne by the Offshore cargoes rises from 2 cents to 3 cents per ton for both bulk and shed tonnage, i. e., to approximately 20 cents and 25 cents per ton respectively.

Car Loading and Unloading Charges

(See Pages 112 to 115 for details)

1. Average over-all costs 45¢ to 47¢ per ton
2. Construction of charge:

Direct labor	62%
Equipment	6%
Salaries (Office)	15%
General expenses	14%
Miscellaneous	3%
	100%

Cost to Terminal of Providing Truck Facilities as Compared to Rail Facilities

(See Pages 127 and 128 for details)

Cost of facilities peculiar to truck transportation 5.7¢ per ton

Costs peculiar to rail transportation (Covers only depressed tracks and tonnage moving thereon to and from sheds) 5.5¢ per ton

All costs peculiar to rail transportation (Including rail facilities on apron high line tracks and embracing all rail borne tonnage) 8.5¢ per ton

[fol. 2239] Over-all Costs of Operating a Marine Terminal

1. Operating expense (100% dock labor)	30%—33%
2. Office—salaries	16%—18%
3. General expenses	13%—15%
4. Maintenance, dredging, depreciation, taxes and return	35%—40%

In closing, the comment is made that the losses being borne by the terminals are met by deferring the items in No. 4 above.

[fol. 2240] Chapter V

Definition or Explanation of Terms Used

1. *Classification of the Steamship Trades:*

(a) *Coastwise:*

Service along the Pacific Coast of the United States between the Mexican and Canadian borders, including such service when via British Columbia ports.

(b) *Inland Waterway:*

Service between San Francisco, Oakland, Alameda or Richmond, California, and ports or points located on San Francisco Bay and inland waterways tributary thereto, but not via the Pacific Ocean.

(c) *Intercoastal:*

Service between San Francisco Bay ports and ports in the United States on the Gulf of Mexico or Atlantic Ocean.

(d) *Hawaiian:*

Service between San Francisco Bay ports and ports in the Hawaiian Islands.

(e) *Alaskan:*

Service between San Francisco Bay ports and ports in Alaska.

(f) *Trans-Pacific:*

Service between San Francisco Bay ports and points west of the 170th Meridian of West Longi-
[fol. 2241] tude, (principally to Asia, Philippines, Australasia and East Coast of Africa.)

(g) *Foreign:*

Service to points other than heretofore described, (principally to Europe, Central and South America and Caribbean Sea ports.)

(h) *Offshore:*

Embraces all the above trades with the exception of "Coastwise" and "Inland Waterway."

2. *Definition and/or Explanation of Wharfinger Terms and Charges:*

(a) *Service Charges:*

Except as otherwise provided, the Service Charge covers any one or more of the services described below, and shall be assessed against all vessels:

1. Arrange berth for vessel.
2. Arrange for cargo space on dock.
3. Check cargo to or from vessel.
4. Receive outbound cargo from shippers.
5. Deliver inbound cargo to consignees.
6. Make up dock manifests and loading lists or tags covering cargo loaded aboard vessels.
7. Prepare over, short and damage reports.
8. Order cars.
9. Give information to shippers and consignees regarding cargo, sailing and arrival dates of vessels, and other incidental data.
10. Lighting wharf.

(Service Charge does not include any labor of handling cargo.)

(b) *Dockage Charges:*

The charge assessed against a vessel and/or watercraft for docking at a wharf, pier or seawall structure, or moored to a vessel so docked, or coming within a slip, channel, basin or canal.

(c) *Toll Charges:*

The charge for cargo conveyed on, over or through any wharf, pier or seawall structure, [fol. 2242] both inward and outward, or loaded or discharged while the vessel is moored in any slip, basin, channel or canal.

(d) *Wharf Demurrage Charges:*

The charge assessed against merchandise which remains on the terminal for five days beyond the free time period. (Penalty charge.)

(e) *Wharf Storage Charges:*

The charge assessed for storage on a fifteen (15) day period basis unless otherwsie provided.

(f) *Receiving and Delivery Charge:*

The charge assessed to cover the labor and clerical duties incidental to receiving, stowing, piling and delivery, but does not include loading or unloading of cars, vehicles or vessels, unless so specified. Receiving and delivery charge will be billed with the storage for the first month.

(g) *Pool Car Assembling Charges:*

The charge for assembling small lots of freight from two or more shippers to make up the minimum weight for a carload watershipment, and forwarding it to destination for delivery to two or more consignees.

(h) *Charge for Handling Rolls of Boxboard in Open Cars:*

The charge for moving cars on dock and covering contents with tarpaulins.

(i) *Charge for Weighing:*

1. Charge for weighing merchandise by individual package or by hand-truck loads.
2. Charge for weighing carload lots over railroad track scales and issuance of weighmaster's certificate.

(j) *Charge for Taring:*

The charge for removing goods from containers, weighing containers and replacing goods in containers.

(k) *Charge for Case Labeling:*

The charge for attaching paper labels to the outside of cases.

(l) *Charge for Case Strapping:*

The charge for placing wire strapping around cases.

[fol. 2243] 3. *Cargo N. O. S.:*

Cargo not otherwise specified or indicated by name in the terminal tariffs. In the application of service charges, toll and wharf demurrage relatively few specific commodity rates are quoted. The "Cargo N. O. S." or "Merchandise N. O. S." items therefore embrace a substantial part of the total tonnage moving.

4. *Gross Registered Tonnage:*

A measure of the internal capacity of the entire ship, in some measurement rules including superstructures, in terms of approximate tons based on space. For this purpose 100 cu. ft. of closed-in space are designated as one ton.

5. *Net Registered Tonnage:*

A figure, measured in the same units as the gross tonnage, obtained by deducting from the gross tonnage allowances made for the ship's machinery, navigation and propelling space and quarters for officers and crew. The net tonnage is thus intended to be a measure of the passenger and cargo-carrying or earning capacity of the ship. It is usually about 63 per cent of the gross tonnage.

6. *Under Deck Tonnage:*

Under deck tonnage comprises the exact measurement of the total space below the uppermost full length deck.

7. *Point of Rest:*

The point of rest, as used herein, means the first point at which the vessel or its agent can pick up cargo for move-
[fol. 2244] ment to ship's tackle or deposit cargo after discharge from ship's tackle.

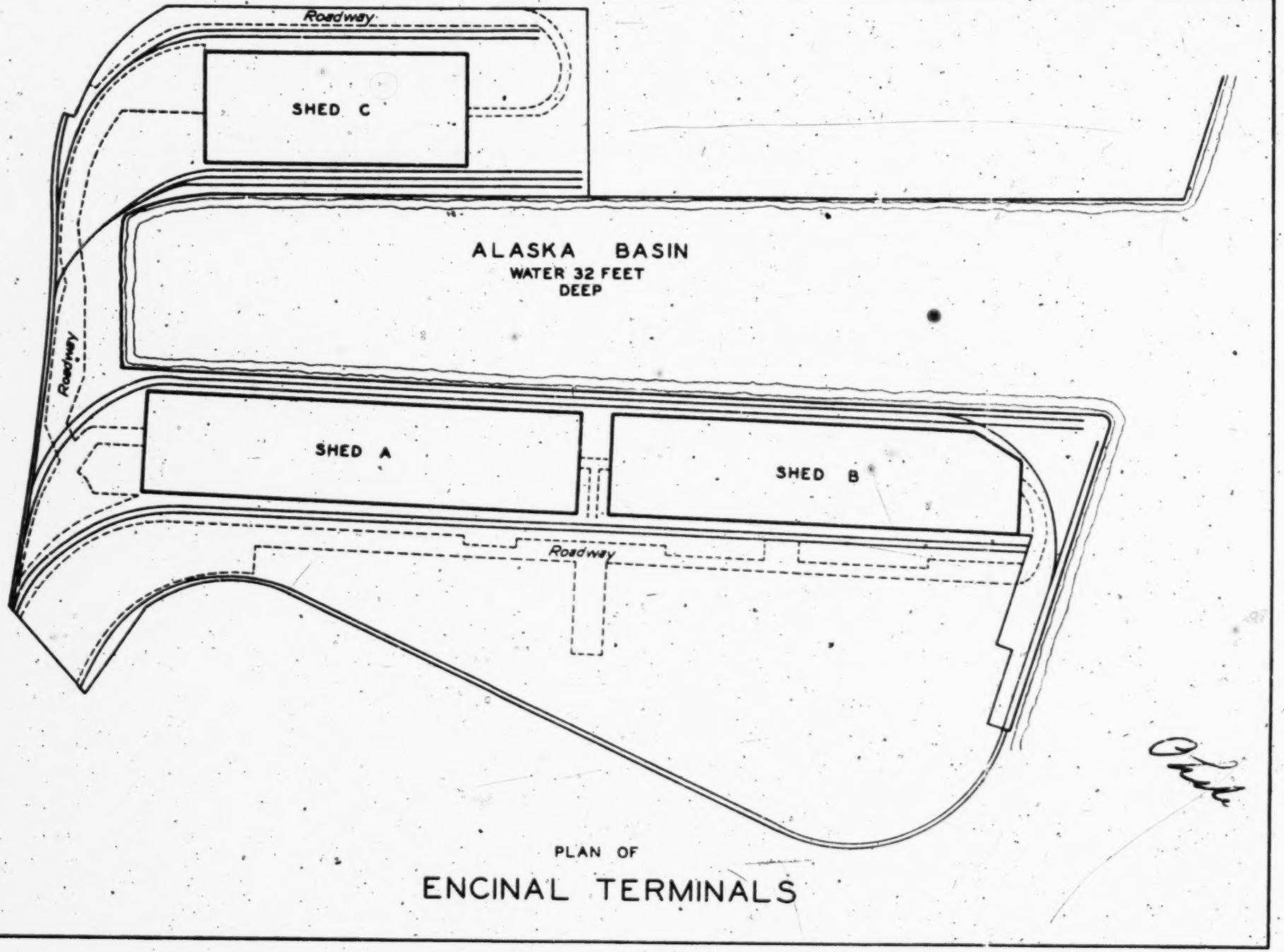
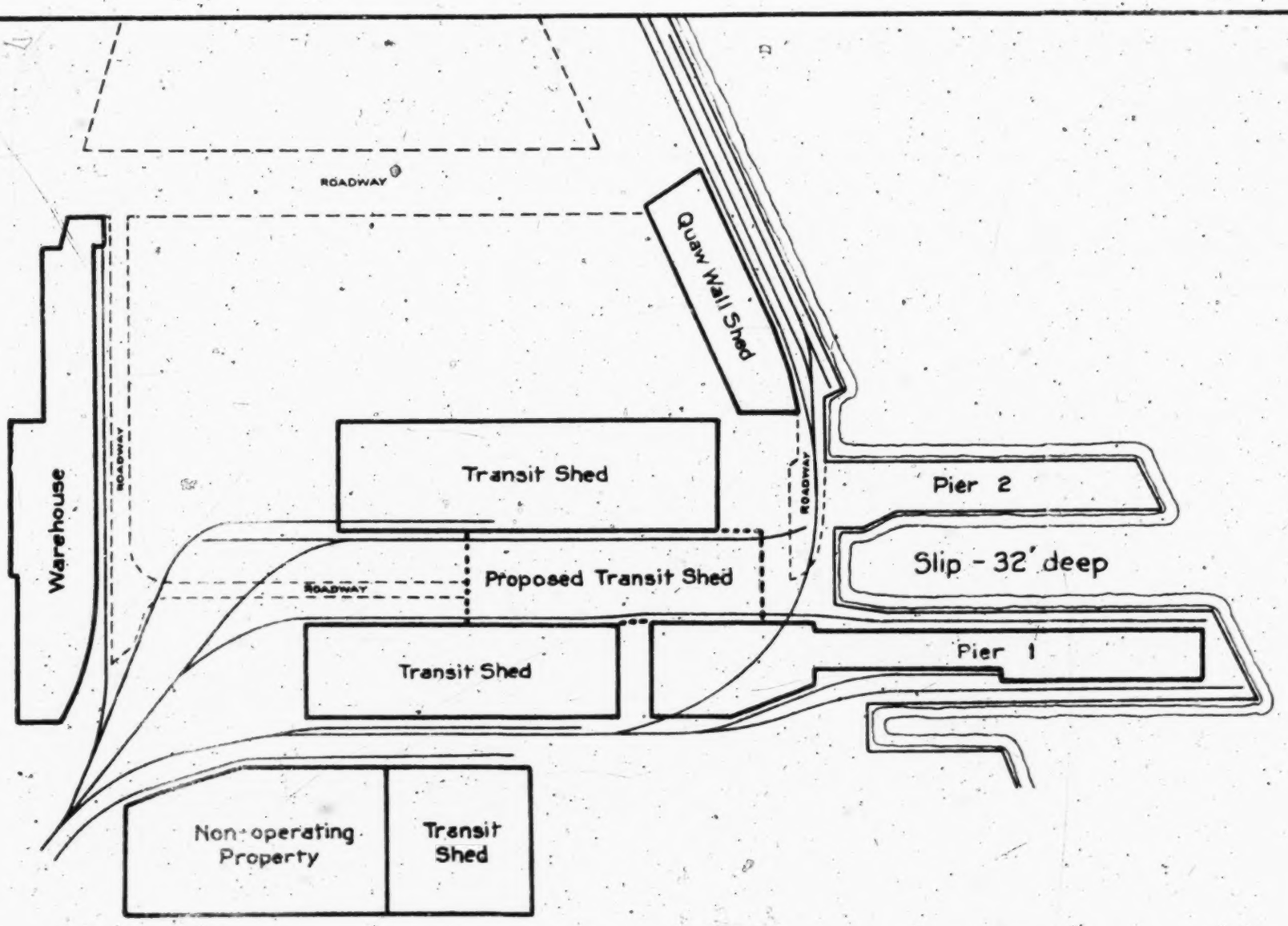


DIAGRAM 1

PLAN OF

ENCINAL TERMINALS

2245



PLAN OF
HOWARD TERMINAL

DIAGRAM 2

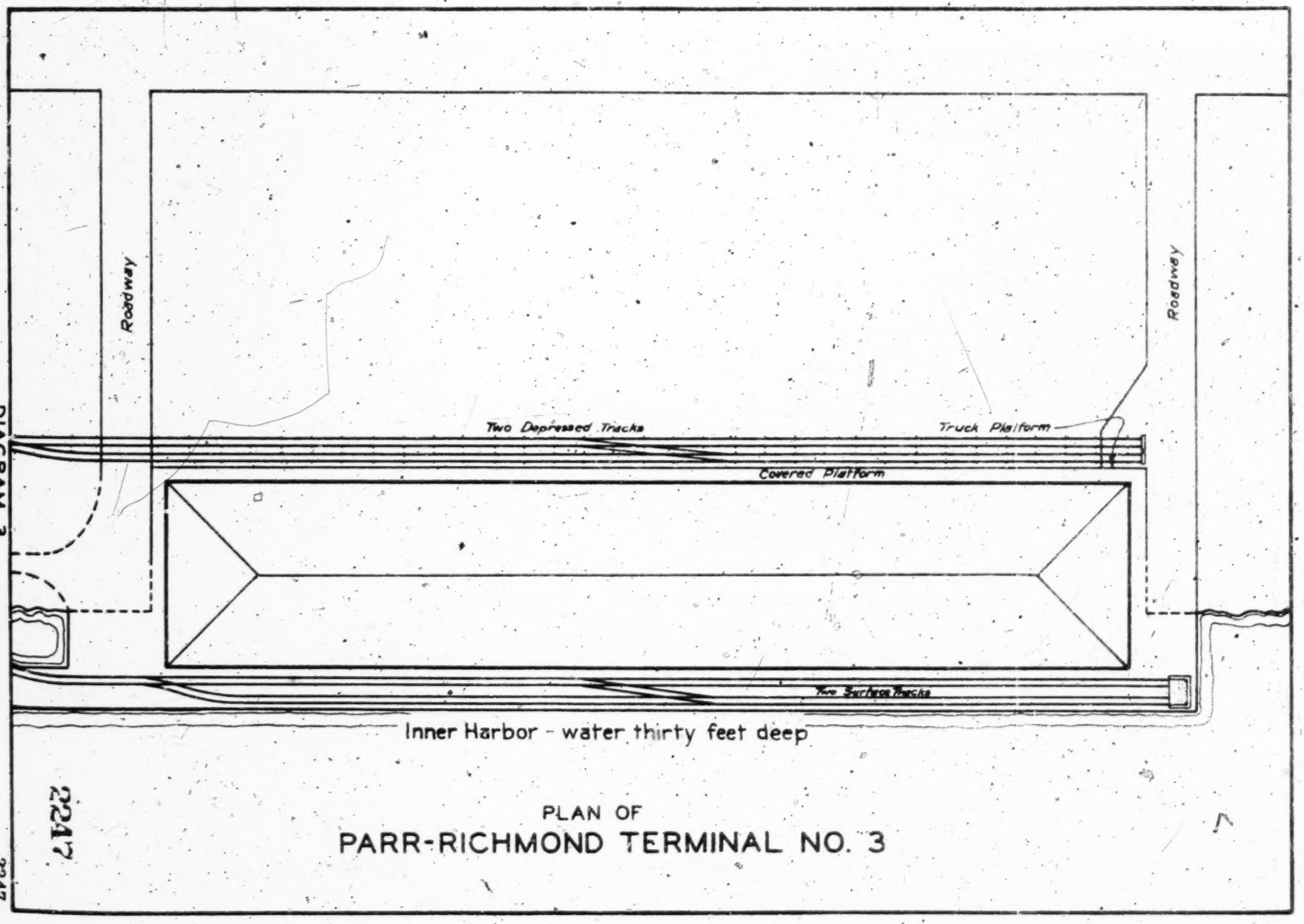


DIAGRAM 3

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PLAN OF

PARR-RICHMOND TERMINAL NO. 3

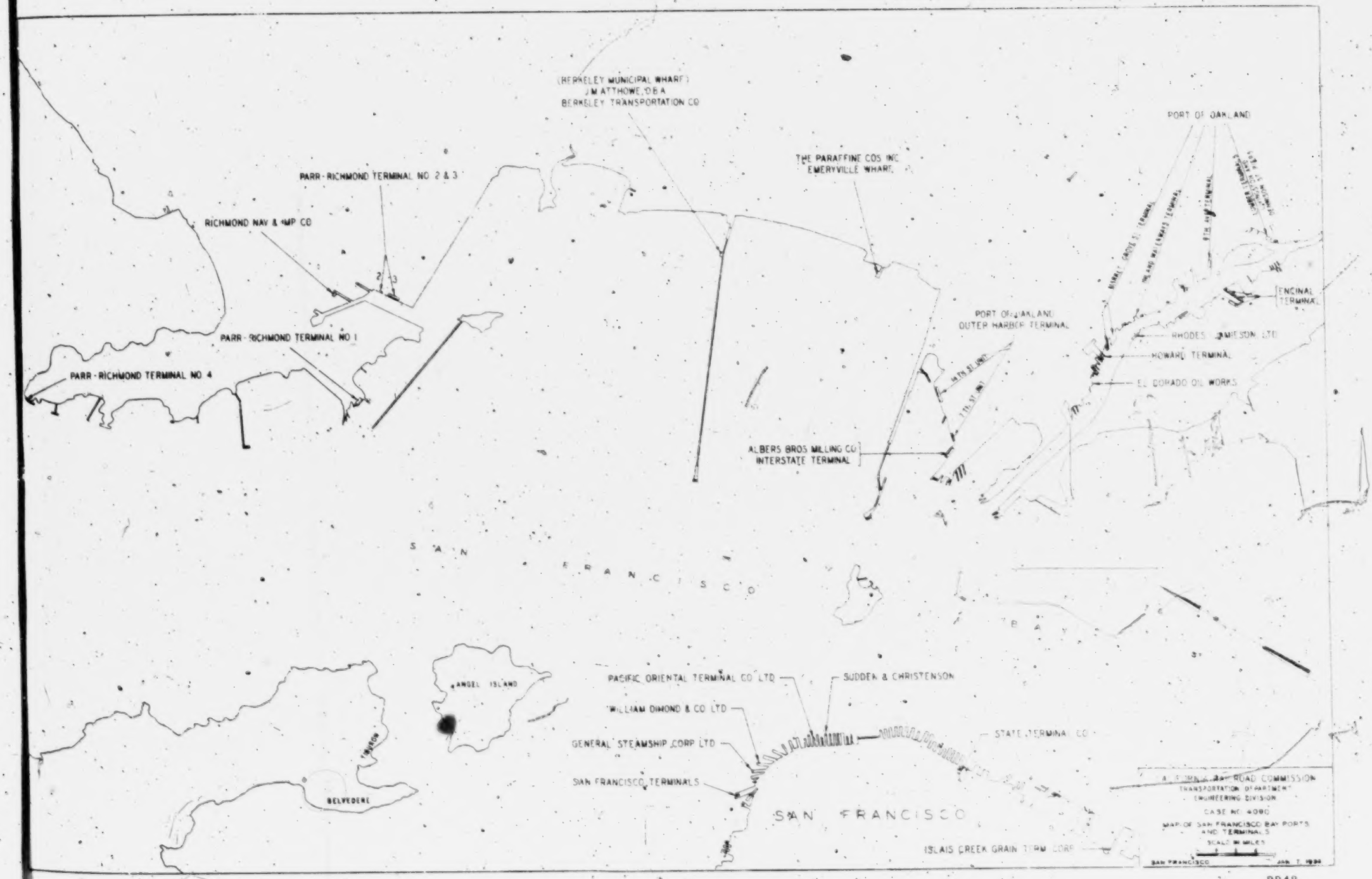

(BERKELEY MUNICIPAL WHARF)
J M ATTHOWE, D B A
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CASE NO 4080
MAP OF SAN FRANCISCO BAY PORTS
AND TERMINALS
SCALE IN MILES
SAN FRANCISCO JAN 7 1934

EXHIBIT No. 62

PROCEEDINGS

OF

Twenty-Sixth Annual Convention

Pacific Coast Association of Port Authorities



OAKLAND, CALIFORNIA

August 23, 24, 25, 26, 1939



PAN-AMERICAN AIRWAYS CLIPPER OVER OAKLAND INNER HARBOR
GROVE AND MARKET STREET PIERS IN FOREGROUND

PROCEEDINGS

OF

Twenty-Sixth Annual Convention

Pacific Coast Association of Port Authorities

OAKLAND, CALIFORNIA

August 23, 24, 25, 26, 1939

970

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Pacific Coast Association of Port Authorities

TWENTY-SIXTH ANNUAL CONVENTION

August 23-26, 1939

VEDNESDAY, AUGUST 23, 1939

10:00 A. M.

Convention was called to order by President A. H. cting as Chairman.

SIDENT ABEL: The meeting will please come to The Twenty-sixth Annual Convention of the Pacific Port Authorities is now in session. We hope that the s sessions will be enjoyable as well as profitable at we shall all receive many constructive and helpful o carry home with us. I am sure, on behalf of the g and business interests of Oakland, that I may say happy indeed to have you with us.

his time I have the honor of presenting to you the able W. J. McCracken, Mayor of the City of Oak- who will extend to you a welcome to this city. (Ap- .)

YOR W. J. McCRACKEN: President Abel, and entatives of the Port Authorities of the Pacific Coast: glad to welcome you here and tell you we are very grateful have come in response to our invitation. I hope every mo- you shall spend here will be very pleasant.

been seventeen years since your last convention was held in d and during that time a great deal of water has gone over and many things have taken place. Even those seventeen re not a great many years in the life of the average person. ng the World War we saw a rapid change in our local condi- sional conditions, and international conditions. We saw an prosperity that was unprecedented; we saw the wheels of in- moving fast, we saw new skylines taking place where none isted before; we saw industry moving at a rate that has not ceased for in past years; shipping and ship operations were ry high point. And then the tragic end came when the false e that we were living in became to us a bubble and the bubble

y fortunes that had been made were lost; industry had been shed; and many disappointments had come to us throughout d other nations. Then we saw a "new deal," a new adminis- come into effect with laws enacted and changes that seemed departure from our original purposes as designed in our Con- n, and I might say that if the authors of our Constitution and dy colonists could see what has gone on and what is going on, ould feel like turning over in their graves, and rising up and to come substantial advice. And then we saw new phases of mensal activity in foreign nations; we saw democracies tossed whirls; autocracies and dictatorships come into being; and with a turmoil that is going on from day to day, as we look at our morning paper, we do not know what is going to happen next. We do not know from moment to moment where we will go from here. However, American people are so charged with an indomitable will, and in view of all the chaos and confusion that is going on in the world today, with all its uncertainties as to where we may be tomorrow, the American people are going on industriously in their own way.

We have built two world fairs, with millions and millions of people directing their thoughts toward pleasure and education. We meet here in convention to plan for our future as though nothing had happened in the past and nothing inimical will happen in the future. And so, we look upon the past as a process of evolution; mankind goes on and upward to a better condition, and I believe the experiences we have had in the past are the kind of experiences that have been known throughout the whole era of history; and we can live in hopes that with a change in the present administration, which, I think, has been a great detriment to this nation—with all the dissension and the gulf that has been placed between the administration and capital, the chasm between industry and employment, the difficulties between the various kinds of unions—we will be led out of the state of turmoil that now seems unfathomable. I believe that the energy and the hope and the faith of the American people will surmount all these kinds of things and that the very spirit that is shown here today in coming from the various parts of the Pacific Coast, engaging in constructive thought and planning for the future regardless of all the turmoil around us is indicative of the fine spirit of the American people which, in the end, will overcome all obstacles.

So it is in this spirit, members of the Pacific Coast Association of Port Authorities, that I want to bring you the greetings of the City of Oakland, and to tell you that we are immensely pleased to have you here after a period of seventeen years, and we hope that it will not be that long again before you come back. We want to extend to you all the hospitality that we have to offer here in the city, and this in done with the hope that your convention will prove not only profitable, but also pleasant, and that you will leave the City of Oakland with many happy memories of your visit here with us. (Applause.)

PRESIDENT ABEL: Thank you very much, Mayor McCracken, for that splendid welcome you have given the delegates and guests of the Association. I trust that you can find time—we know you are now very busy—but I trust you can find time during the convention to take part in our further deliberations.

MAYOR McCRACKEN: Thank you. If you will excuse me, I will go about my regular duties. Good-bye. (Applause.)

PRESIDENT ABEL: We are also honored this morning by the President of the Board of Port Commissioners, Port of Oakland, the Honorable James J. McElroy. Mr. McElroy has been for many years a member of the Board

and has kept in touch with maritime matters, I think, since his early days; he has also been a world traveler. I feel he is very well advised in the matters of the Pacific Coast as to harbors and trade. It is with a great deal of pleasure that I will ask Mr. McElroy to say a few words of welcome on behalf of the Port of Oakland. (Applause.)

MR. J. J. McELROY: Mr. Chairman, and gentlemen of the Convention:

I know you did not come here this morning to hear a lot of unnecessary speeches, but I want to assure you that it is a pleasure for the Port Commission to entertain you on this, your second visit to the City of Oakland.

We of Oakland have very pleasant memories of your last convention. Prior to that convention, the City of Oakland, in attempting to administer its waterfront, seemed to be wandering in a maze. There was nothing definite; there was a very indefinite atmosphere, but there were thoughts and ideas gained at your last convention that I think were instrumental in organizing a port commission for the City of Oakland, and for that reason we have always entertained a pleasant memory of your last coming. We are going to try to make this stay as pleasant as we can, and show you our big bridges, our fair, our waterfront, our skyline, and at the same time give you plenty of time to transact your business. I want to assure you again we are very happy to have you with us. (Applause.)

PRESIDENT ABEL: Thank you very much, Mr. McElroy. I trust that you, as President of the Board of Port Commissioners of the Port of Oakland, can find time during this convention to spend quite a bit of time with the gentlemen here. I think you will find it will be quite profitable.

May we have a response by our good friend, Kenny Burns?

MR. K. J. BURNS (Vancouver, B. C.): President Abel, Mayor McCracken, Mr. McElroy:

It is with a great deal of pleasure that we have listened to your very kind words of welcome to the members of our Association. A number of years ago, when I first had the honor of visiting Oakland, I was shown a lake in the center of your beautiful city which was covered with all kinds of wild fowl and was for them a sanctuary where, during their visit with you, they were assured of happiness, comfort, safety, and contentment. When asked to bring to you an address of welcome, my thoughts drifted back to that day and I thought surely we may very aptly use the same word, "sanctuary," in connection with our visit here with your citizens at this time. We will be with you for several days, and know full well that the best wishes of your city and port are ours, and that during the time we are with you we are assured of a welcome second to none. We all greatly admire your port, with its magnificent air and other important facilities, to say nothing of the efficient management of same, and we will without a doubt greatly benefit from our visit with you.

During the past year we have all at times been upset by wars and rumors of wars, but at least for the next few days, while we are with you as your guests, all such worries, I feel, will evaporate, due to the kindness and hospitality of your citizens.

May I, therefore, on behalf of the members of the Pacific Coast Association of Port Authorities, thank you most sincerely for your very kind words of welcome given to us this morning. I thank you. (Applause.)

PRESIDENT ABEL: Thank you very much. Now that we have had our words of welcome and the response thereto, I think it is fitting before we start our deliberations to have a word of spiritual guidance, and I am going to ask our friend, Rev. Harold Thatcher, to pronounce the invocation.

REVEREND THATCHER: Almighty God, to whom all hearts are open, all desires known, and from whom no secrets are kept, before the mountains were brought forth or ever Thou didst form the ear or the word, even from everlasting to everlasting, Thou art God. We do not at this moment presume or during the duration of this convention to dictate Thy policies, for Thy dominion is from sea to sea and from the river to the ends of the world. But we make bolder, in the name of Christ, the Savior and Redeemer of all men everywhere, to invoke Thy blessings and ask for Divine Wisdom in the consecration of matters which most surely relate to the economic, social, and spiritual welfare of the entire world. Therefore, O Lord, as these business men pass to the problems of our troubled and unsettled day, may the Spirit of Good-will pilot them safely and intelligently into the Harbor of Brotherly Love, where a proper understanding of international relationships will be a watch tower for a universal feeling of happiness. Amen.

PRESIDENT ABEL: Thank you very much, Reverend Thatcher, for your kind words of guidance. I trust that you may find time to be with us during our convention.

We will now be presented with a report of the Secretary-Treasurer, Mr. McCarl.

SECRETARY-TREASURER McCARL: Members of the Association:

The Secretary is pleased to report that all matters which have been brought to his attention and requiring action on his part during the year have been disposed of, with the exception of those pertaining to the Convention. Those pertaining to the Convention, including the auditing and payment of all items of expense, printing of proceedings, correspondence resulting from action taken at the business sessions, etc., will be properly disposed of so that the records may be passed on to the succeeding Secretary in good order. All items of revenue and expense involved in the holding of this Convention have been properly budgeted, and it will be our objective to pass on to the succeeding Treasurer an account at least equal to that received from the preceding Treasurer. All dues of Corporate, Associate and Contributing members have been paid.

At this time the Association's records show the Corporate and Associate membership to be as follows:

Class "A" — $150.00 per year
Los Angeles, California
Oakland, California
Portland, Oregon
San Francisco, California
Seattle, Washington
Vancouver, British Columbia

Class "B" — $50.00 per year
Long Beach, California
San Diego, California
Tacoma, Washington

Class "C" — $25.00 per year
Astoria, Oregon
Bellingham, Washington
Everett, Washington
Grays Harbor, Washington
Longview, Washington

New Westminster, British Columbia
North Fraser, British Columbia
Olympia, Washington
Port Angeles, Washington
Stockton, California
The Dalles, Oregon
Vancouver, Washington
Willapa Harbor, Washington

Associate Members — $10.00

Don G. Bates, Portland, Oregon
Mark Colby, Seattle, Washington
Walter Murphy, Redwood City, California
Geo. F. Nicholson, Los Angeles, California
Portland Chamber of Commerce, Portland, Oregon
J. R. West, Seattle, Washington

As the Contributing membership changes from year to year, this class of membership is not included in the above.

As items of expense in connection with the Convention cannot be determined at this time, a complete statement of Receipts and Disbursements will be made following the Convention and incorporated in the proceedings.

In closing, I wish to thank the membership for having conferred on me the honor of electing me to the office of Secretary-Treasurer during the present year, and to state that I have greatly enjoyed the work, even though same has required the burning of considerable midnight oil during the past few weeks.

I also wish to take this opportunity to thank the former Secretary-Treasurer, Philip H. Carroll, for having passed on to me in fine condition the records for the previous year. I shall endeavor to pass on to the succeeding Secretary the records for this year in equally good condition.

Respectfully submitted,

M. D. McCARL, *Secretary-Treasurer.*

(Applause.)

PRESIDENT ABEL: What is your pleasure with regard to this report, gentlemen?

MR. K. J. BURNS (Vancouver, B. C.): I move that this report be adopted.

COLONEL B. C. ALLIN (Stockton): I second the motion.

PRESIDENT ABEL: The motion has been duly made and seconded. All in favor signify by saying "aye"; contrary minded, "no." The report is adopted.

The next on our program is the report of the President. I will take pleasure in reading the report:

Members of the Association:

I have appreciated very much the opportunity which you have afforded me to serve as President of the Association during the past year.

The twelve months since the Portland Convention, which we all so fully enjoyed, have passed only too rapidly, and during their passing many important matters, some affecting the Northern ports, some of interest to the Southern ports and others applicable to all Pacific Coast ports and ports of the nation, have been the subject of hearings before the Congress, the Maritime Commission and other regulatory bodies. Then, too, each port, no doubt, has had its local problems requiring solution. In all it has been a very busy year. I trust it has been a profitable one.

I believe it is safe to say that none of the ports of the Pacific Coast have enjoyed immunity from the commonest and most acute of our ills, namely, labor troubles. In this respect, dark clouds are now appearing along the coast and the signals for a severe storm are being hoisted. Let us trust that the storm will not materialize, and that our ships will sail uninterruptedly to and from our ports with the passing of September 30th.

Throughout the year your Association has assisted in such manner as was possible with its limited resources in opposing legislation adverse to the interests of the ports. Effective opposition was made against the repeal of the Fourth Section clause of the Interstate Commerce Act, which was again being urged for passage during the last session of Congress.

In respect to the discontinuance of the issuance of statistical reports covering waterborne commerce by the Maritime Commission, after a canvass of the Association members, protest was made to the Commission against the discontinuance of these reports. Other legislation was called to the member ports' attention, including H. R. 5130, amending Intercoastal Shipping Act, hearing on which was indefinitely postponed. Inasmuch as differences in opinion among the Association members existed as to opposition to certain legislation, no action was taken by the Association.

On August 14, 1914, the Panama Canal was opened to navigation, and this year we are celebrating the twenty-fifth anniversary of the joining of the Atlantic and Pacific Oceans. Since its opening, more than 100,000 vessels have passed through this interocean waterway. It is well to pause and reflect on how the canal has affected the commerce of our ports, and how it has changed our port business from the days when the ships sailed around the Horn, as many of us now here well remember. It is my distinct recollection there were fewer bridges in our harbors to impede the operation of our ports in the good old days.

A number of very interesting papers and discussions have been prepared, and I desire, on behalf of the Association, to thank those who have given freely of their time to place before us the valuable information they contain. I trust there will be a full discussion on the floor of the Convention of the various papers, as it is in this way we obtain the greatest good from our sessions.

We have tried to prepare a pleasant program of entertainment, and I hope you all will enjoy your stay in Oakland to the fullest extent.

Respectfully submitted,

A. H. ABEL, *President.*

(Applause.)

PRESIDENT ABEL: That is the report, gentlemen, what is your pleasure?

MR. K. J. BURNS (Vancouver, B. C.): I move the acceptance of the report to be placed on file.

CAPTAIN J. W. BRENNAN (San Diego): I second the motion.

PRESIDENT ABEL: The acceptance of this report has been moved and seconded. All those in favor signify by saying "aye"; contrary minded, "no." The motion is carried.

Mr. Secretary, have you any communications at this time?

SECRETARY McCARL: We have a few communications to be read at this time.

The first one is from United States Senator Hiram Johnson of California at Washington, D. C.:

A. H. Abel, President, Pacific Coast Association of Port Authorities, foot of Grove:

I am deeply grateful for your telegraphic invitation received this morning. A prior imperative engagement precludes me from being with you at the luncheon. It is with the utmost reluctance that I am compelled to send my regrets. My best wishes for a thoroughly enjoyable and most auspicious occasion.

(Signed) HIRAM W. JOHNSON

Here is another telegram from W. D. S. Rorison:

A. H. Abel, Hotel Oakland:

Impossible to get to the Convention. I know it will be a huge success. Hope to see you at our International Harbour and Port Day of the Transportation and Customs Bureau Vancouver Board of Trade next summer.

(Signed) W. D. S. ROBISON.

Another communication:

A. H. Abel, Esq., President, Pacific Coast Association of Port Authorities, Hotel Oakland:

The Transportation Bureau Vancouver Board of Trade extends greetings and sincerest wishes for most successful sessions on record in this momentous period. We appreciate your interest in our International Port Day towards goodwill also increased trade and tourist traffic between ports Seattle Bellingham New Westminster Everett North Fraser Tacoma Stockton and Los Angeles represented Pacific Coast points this year. We invite every port to Vancouver for this event next May.

(Signed) W. A. RUNDLE, *Bureau Manager.*

Next we have a letter to our President from Mr. C. A. Cotterell, Assistant General Manager of the Canadian Pacific Railway Company:

Dear Mr. Abel:

Further your letter of July 11th, and mine of the 21st ultimo, relative to your Twenty-sixth Annual Convention.

I have now received confirmation of the itinerary covering the annual visit of our Chairman and President and Board of Directors to British Columbia, and, just as I was afraid of, the dates will not permit me to attend the Convention and be back in time to meet the party, which, I am quite sure you will appreciate, I really must do.

At luncheon today I asked Kenny Burns to express to you all my regrets at not being able to be with you, but I should like to convey to all present my kindest regards and very best wishes for a most successful and enjoyable Convention.

Yours sincerely,
C. A. COTTERELL.

Here is a letter from Mr. R. O. Campney, Chairman, National Harbours Board, Ottawa, Canada:

Dear Mr. Abel:

On behalf of the National Harbours Board I wish to take this opportunity to send along our best wishes to yourself and the members of the Pacific Coast Association of Port Authorities, and to express the hope that the Convention opening in Oakland on August 23rd may be a great success in every way. I greatly regret that other engagements prevent any members of the National Harbours Board being present at the Convention.

With kind personal regards,

Yours sincerely
R. O. CAMPNEY, *Chairman.*

The last communication this morning is from Mr. C. D. Howe, National Harbours Board, Vancouver, B.C.:

My Dear Mr. Abel:

I regret very much that I will not be able to be present at your Annual Convention to be held in your city from the 23rd to the 26th of August, 1939.

However, at this time, I wish every success for your Convention, and a continuation of the good work you have carried on in the past.

Yours most sincerely,
C. D. HOWE, *Minister of Transport.*

(Applause.)

PRESIDENT ABEL: Thank you, Mr. Secretary.

At the Portland Convention last year there was appointed a Sergeant-at-Arms, with an assistant, to function during the Convention. I think it is very fitting that we continue the custom, and I would like to appoint Colonel Bickford, from Seattle, as a Sergeant-at-Arms, and, as assistant, Mr. B. George Hannuld of Vancouver. They are both pretty able-bodied fellows, and I think they will do a good job. I am going to ask these two men, if they are both in the room, to come forward.

Colonel Bickford isn't in the room? Well, then, Mr. Hannuld, you come up. I haven't any handcuffs or balls and chains to give you to help you to keep order, but have here a very nice book in which all the members want to register "kicks" are privileged to do so. body who has any "kicks" see the Sergeant-at-Arms register the "kicks" with him. All complaints will re our attention. Now, George, will you do your duty? and the Colonel are to pack this book around with for the convenience of the delegates. Thank you. plause.)

The Secretary has found two more communica that should be read at this time.

SECRETARY McCARL: We have one here f James B. Thompson, Vancouver, B. C.:

Dear Mr. Abel:

In a few days the 26th Annual Convention of this very val Association will be held under your Chairmanship. Might croach upon your good nature to convey to all those assembled very best wishes for a very successful convention. Personally I w like very much to be with you, but the changes in business life it impossible for me to travel to Oakland at the present time. tainly would enjoy meeting the many old companions of days whom I had the privilege of knowing very intimately as a ministrator of the Port of Vancouver.

Again wishing you the very best,

Yours sincerely,
JAMES B. THOMPSON

Here is another from my good friend, Phil Carroll.

Dear Mr. Abel:

Thanks for the copy of your let . of July 14, and I also bro same to the attention of Mr. Merrill, that he might take this m up. He assures me he will give this his early attention.

In connection with the papers before the Convention, it has occ to me that it might be a good suggestion to set up a special mittee to receive suggestions from the membership on the va subjects for papers at the next convention. This committee, ha definite recommendations and suggestions as to subjects for the pa will be able to prepare topics of more or less interest to the mem and submit them to the incoming Secretary. If this appears to any merit, you might keep it in mind and bring it up at the vention.

PRESIDENT ABEL: You have heard the readin the communications, and Phil Carroll's suggestion. W is the pleasure of the Convention on this matter? De wish it referred to a committee? Have we any thou on that matter, gentlemen?

MR. PHILIP H. CARROLL (Portland): I know year there was considerable difficulty in collecting to and I thought if we take the occasion at the Conven with all present and let them submit ideas to a com tee, it would give the incoming officers something work on, and they would not have to wrack their br for topics. If anybody wants to oppose me I would lik hear from him.

PRESIDENT ABEL: I think the suggestion is a g one. I don't want to see anybody's brains wracked there a motion from the floor?

MR. CARROLL: I move that such a committee appointed.

MR. K. J. BURNS (Vancouver): I second the motion.

PRESIDENT ABEL: It has been moved and seconded that a committee be appointed to receive suggested topics for papers to be read at the next convention and such topics to be presented to the Secretary. All those in favor signify by saying "aye"; contrary minded, "no." The motion is carried. I will announce the committee at a later time.

MR. B. GEORGE HANSULD (Vancouver, B. C.): I notice there are only twenty sheets in this "kick" book. I presume you will be able to supply some more. (Laughter.)

PRESIDENT ABEL: If you will notice, George, that is a loose-leaved book, and we can supply you with just as many pages as you need. We can take it, George. (Laughter.)

The next item on our calendar is the appointment of committees. We have a most important committee to be appointed. It has to do with the well-being of the Convention members. This committee is the Committee on Marine Room Regulations. It is my pleasure to appoint Nels Weborg of Everett, Washington, as chairman of that committee. (Applause.) With him are to be associated Jack Cox of the *Traffic World* and Nick Carter of Vancouver. Then, we also have Mark Colby from Seattle, who will cooperate with this committee. Now, Nels, just stand up so that those who don't know you will be able to see you. I doubt that there are very many here who do not know you. You have a very important function, and you must carry on in the proper manner; do your duty at all times and there will be no fault to find.

MR. NELS WEBORG (Everett): I have just had word from my co-committee man, Mr. Cox, that we will have order, and lots of it.

PRESIDENT ABEL: For the Committee on Credentials: I have the pleasure to appoint H. W. Hunter, Bellingham; J. A. Earley, President of the Port of Seattle; and A. H. Averill, Portland, our Past President.

We have, next the Committee on Resolutions: Smith Wilson, Port of Seattle; K. J. Burns, Vancouver, B. C.; Philip Carroll, Portland; Mark Gates, San Francisco; and G. E. Arbogast, Los Angeles.

On the Committee on Honorary Members: Hans Mumm, Everett, Washington; K. K. Reid, New Westminster, B. C.; Frank Gowdy, Longview, Washington, Eugene Overton, Los Angeles; and Don Marshall, Port Manager of Long Beach.

On the Committee on By-Laws and Constitution: Henry Davies, Port Angeles, Washington; T. P. MacComber, Vancouver, Washington; and George Moore, Los Angeles.

Committee on Nominations: Joe Brennan, San Diego, A. D. Merrill, Portland; W. J. Murphy, Grays Harbor, Washington; George Osgood, Tacoma; and Colonel B. C. Allin, Stockton.

We have a Committee on Regulation to be appointed, and that will be announced at a later time.

We are too speedy, apparently, because we are ahead of our schedule. I was going to ask what is your pleasure? Is Mr. Marias present?

MR. A. D. MERRILL (Portland): No, he is over in the city this morning.

PRESIDENT ABEL: Where is that? (Laughter.)

I would like to have you know that "the city" is Oakland and there was a city across the bridge, but that is San Francisco. (Laughter.)

Inasmuch as we are ahead of our program, the thought is that we kind of take it a little easy this morning, get acquainted, and then we will start in with our papers right after luncheon. However, might I mention that we are having lunch with the Lions Club this noon?

An announcement was made that the members having tickets at the Head Table were to meet in the Cameo Room at one o'clock and all march in together.

Another announcement was made that the Marine Room would be open from 11:30 to 12:00 noon.

Are there any matters from the floor that should be discussed at this time?

MR. HORACE P. CHAPMAN (Seattle): Those of us from the North are very proud of the Chairman of the Marine Room Committee, but we have, and it has been mentioned here, one among us that we are even more proud of, and that is Henry Davies. Henry has taken a step, and I would like to see Henry take a step to the front. He is a newlywed, and believe me, Henry, you should come up to the front here and take a bow. (Applause.)

MR. HENRY DAVIES (Port Angeles): I might say this: That I have been coming to these conventions for a good many years, and every time they come they always give me a funny look, and I could tell they were saying to themselves, "I wonder if he is still single." So this time I thought I would fool them. (Applause.)

PRESIDENT ABEL: I think you are wise, because now we can get you away from the Bachelors' Table you always patronized in the past.

MR. GEORGE OSGOOD (Tacoma): Arthur Eldridge of Los Angeles is also a newlywed. He ought to come up and receive our congratulations. (Applause.)

MR. ARTHUR ELDRIDGE: I agreed when I got married that my wife would do all the talking for me. (Applause.)

PRESIDENT ABEL: I don't think I have been to a convention for a long time where there have been any newlyweds. We are quite honored.

I see Nick Carter from Vancouver, B. C. Have you a message for us?

MR. EDWARD CARTER: I am very glad to be here, but I didn't expect to have to say so. That is taken for granted. I am happy to be here and to be called upon to say so. (Applause.)

PRESIDENT ABEL: Thank you, Nick, that was fine.

Well, if there is nothing further at this time, a motion is in order to stand adjourned at the present time and to convene then at two o'clock this afternoon, when we will start our papers.

After a motion being duly made and seconded, the meeting was adjourned at 11:15 A. M.

WEDNESDAY, AUGUST 23, 1939
2:00 P. M.

The meeting was called to order by President Abel.

PRESIDENT ABEL: Mr. Secretary, there are some more communications. Will you kindly read those communications?

SECRETARY McCARL: We have some invitations here for the meeting place of the next annual convention.

There is one here from Los Angeles. It has a nice gold seal and some pretty ribbons on it.

PACIFIC COAST ASSOCIATION OF PORT AUTHORITIES
Convention 1940

Greetings:

The citizens of Los Angeles are happy to join with your local members in extending a cordial invitation to your Association to meet in this city, and they pledge assurance of every cooperation in making your convention successful and pleasurable.

Your representative membership will find that Los Angeles is a city of variant attractions and one of America's most interesting cities. Natural beauty of Southern California, industrial progress, commercial enterprise, recreational supremacy are matched by cultural advantages.

With the movie capital of the world within its borders, entertainment and amusement reach their zenith. Convention guests may choose between days and evenings of thrills and excitement, or restful mañana days and peaceful moonlit evenings. Indeed, you will enjoy the allurement of Los Angeles.

You will find the hotel and convention accommodations unsurpassed. Hundreds of thousands of convention guests bear witness to the city's hotel hospitality and the cordiality of our business institutions.

May we again renew our invitation to your important organization to come to Los Angeles? It will be our pleasure to serve you.

Very sincerely,

(Signed)

FLETCHER BOWRON, *Mayor*, City of Los Angeles
JAMES L. BEEBE, *President*, Los Angeles Chamber of Commerce
ROGER W. JESSUP, *Chairman*, Board of Supervisors, Los Angeles County
ROBERT L. McCOURT, *President*, Los Angeles Jr. Chamber of Com.
KATHERINE C. MOORE, *Chairman*, Women's Convention Committee
GRACE S. STOERMER, *President*, Women's Community Service Auxiliary
(Seal)

We also have one here from Long Beach. It is an official invitation from the city of Long Beach, California, County of Los Angeles:

No. 292 OFFICIAL INVITATION
from the
CITY OF LONG BEACH, CALIFORNIA
COUNTY OF LOS ANGELES

To Pacific Coast Association of Port Authorities

The City Manager and the members of the City Council join with me in extending this official and cordial invitation to hold your convention in this city. You may expect the complete cooperation of every official. Nothing will be left undone, no expense will be spared to make your visit to "Nature's Convention Metropolis" a never-to-be-forgotten occasion. Long Beach has every facility to make good this promise. Its fame as a convention city is known far and wide, and the hospitality of its citizens spells W-E-L-C-O-M-E in capital letters.

In witness whereof, I affix hereunto the seal of the City of Long Beach, California, and shall await with pleasure the opportunity of greeting you personally in 1940.

(Signed) FRANCIS H. GENTRY, Mayor
this 16th day of August, 1939

(Seal)

There is also a communication from the Long Beach Chamber of Commerce:

LONG BEACH CHAMBER OF COMMERCE
LONG BEACH, CALIFORNIA
AUGUST 16, 1939

Pacific Coast Association of Port Authorities
In Convention Assembled.

GENTLEMEN:

The Long Beach Chamber of Commerce joins the City Administration, the Long Beach Chamber of Commerce Convention Department, the various business, civic and fraternal institutions, and citizenry at large in inviting your organization to hold its 1940 convention in this city.

Long Beach is proud of its reputation as an ideal convention city and provides its visitors a perfect climate, silver strand, ocean and still-water bathing, yachting, Walk of a Thousand Lights, spacious Convention Hall, famous Municipal Band, and scores of other worthwhile attractions and special entertainment features which, coupled with its unsurpassed natural facilities, offer an unusual appeal.

We sincerely hope that this invitation will receive your very careful consideration, and if your selection is favorable to Long Beach we pledge you the unlimited facilities of this organization in making your 1940 convention the finest and largest in the history of your organization.

Long Beach's entire population of approximately 180,000 will consider it a privilege and a pleasure to act as your host in 1940, and joins the Chamber of Commerce in sending its warmest greetings.

Very truly yours,
LONG BEACH CHAMBER OF COMMERCE
(Signed) By G. A. Hart, *President*

There is another invitation here from the Hollywood Convention and Tourist Bureau.

HOLLYWOOD CONVENTION AND TOURIST BUREAU
Division of the Hollywood Chamber of Commerce
6520 SUNSET BOULEVARD
HOLLYWOOD, CALIFORNIA
AUGUST 14, 1939

Mr. A. H. Abel, President, Pacific Coast Association of Port Authorities, care Port of Oakland, Grove Street Pier, Oakland, California

Dear Mr. Abel:

HOLLYWOOD INVITES YOU to participate in Hollywood convention hospitality.

Back of this invitation, we wish to respectfully call your attention to the vast entertainment possibilities Hollywood has to offer. Hollywood's Radio City (Columbia Broadcasting System and National

Broadcasting Company), where nationwide network programs originate; Griffith Planetarium, a study of the stars; Max Factor's motion picture make-up studios; Hollywood Bowl, with its Symphonies under the Stars; Chinese Theatre, famous for its footprints of featured motion picture players; Fanchonette Studios of Fanchon and Marco, where dance tableaux are in preparation for the stages of the world; Japanese Gardens and Homes, an architectural and horticultural replica of Japan, faithfully reproduced in a setting of seven and one-half acres high above Hollywood Boulevard; world-famous color-glass depiction of the Lord's "Last Supper" in Forest Lawn Memorial Park; giant motion picture studios producing entertainment for the world, and other attractions too numerous to mention.

Hollywood has twenty-four hotels with convention rates ranging from $2.00 per day for single room accommodations to $7.00 per day for double occupancy. We will be pleased to make arrangements so that your convention activities may be carried out in one of our leading hotels, or if you prefer, the facilities of our excellent and conveniently located auditoria are available at no cost to the organization. In addition to this, the Bureau will assist in building attendance, and will furnish badges, program outlining convention activities and registration assistance. We will also co-operate with your co-ordinator and various committees in all phases of your convention program, including entertainment, publicity and other activities which will help to stage your most successful convention.

Hollywood's major civic organizations join us in extending this invitation to you and members of the Pacific Coast Association of Port Authorities, with a sincere desire to welcome you to Hollywood in 1940.

With best wishes,

Sincerely yours,
(Signed) DAN G. ADDISON, *Manager*.

PRESIDENT ABEL: You have heard the invitations. They will be referred to the proper committee for consideration.

We are happy to have with us this afternoon a gentleman who I have known for many years and who has just recently come into the "Duties and Responsibilities of a Port." Mr. Marias, President, Board of State Harbor Commissions, will present a paper on this subject. Mr. Marias. (Applause.)

MR. MARIAS (San Francisco): Thank you very much, Arthur. He called me "Mr," but I call him "Arthur." (Laughter.)

Mr. President and Members of the Pacific Coast Association of Port Authorities:

Although I have been only a short time in my present capacity, I have been identified for a long term with ports, for I have been in and out of the work for many years. It is good to see some of my old friends, and I like to meet so many new ones. There's one old friend here I'd like to mention, because I see Mr. Earle here from Los Angeles. I would like to say that he and I were on the Board of Harbor Commissioners in Manila, and while we were on the Board of Harbor Commissioners in the Philippine Islands we had the pleasure of bringing the efficiency of that port up from the lowest in the Orient to the highest. So Los Angeles grabbed Earle and thought that they were going to have him bring Los Angeles to the highest rating on the Pacific Coast, and then Governor Olson heard about me. (Laughter.) So I appreciate very much, gentlemen, the privilege granted me in delivering this first paper.

Duties and Responsibilities of Ports

By J. F. MARIAS, *President*,
State Board of Harbor Commissioners,
San Francisco, California

The very first fact to accept in discussing the duties and responsibilities of ports is that port functions are public services—no more and no less. This principle applies whether the operation is by the state, city, port district or by private operators. Generally speaking, port facilities are the connecting links of a stationary character between two mobile systems. Being a link, it is essential that its functions be highly efficient and economical. It is the right of the public to demand, and therefore receive, the highest type of services.

It is the duty of every port to meet the demands of the commerce naturally tributary to it. It is not a question of whether or not the handling of that commerce is a paying operation to the port itself so long as it means the development of commerce for the tributary area. This does not mean, of course, that the port facilities are to be subject to every and any kind of economic plan. It means that the port has no choice in the matter when business is sent through it that will mean much to the hinterland. There is, therefore, a vast difference between ports. There are ports that give a full and complete service, and those that give but a partial service. There must be a definite division between ports in this respect. In the first class, the major ports, complete facilities *must* be provided. In the second class, the minor ports, provide only that which their limited space and financial ability permits. Usually the business that the minor ports do is either a part of the major port's former business or specialties in bulk movements, such as lumber, grains and the like.

Since all ports should be developed solely for the purpose of rendering a public service, there must be no competition. The rendering of a public service in port operation may be compared to the providing of water to a city. There must be no competition. It is a public necessity. As the servicing of the water system relates to a city, the port service relates to the tributary district. Any competition in a public service only increases the costs of handling the commodities, and that is essentially wrong.

We all know that there is a definite movement towards Federal control of all ports. Why? Well, my reply would be that this move is considered necessary because there has been too great a departure from the true intent of port duties; or, in other words, too much competition where no competition should prevail. Whether we agree with Federal control or not, we are certainly being forced into considering it. We should then ask ourselves if we have made such economic errors as are responsible for this movement.

I am personally convinced that the weakest part of our national economy is our distribution system. True enough, we have the Interstate Commerce Commission and the United States Maritime Commission, and the various intrastate commissions, to regulate our distribution, but even with all of these regulatory commissions, we are far from perfect, and there is still much to be desired in distributing our products domestically and our surpluses internationally. We still find it too costly to distribute all of our production to our own consumers at the prices that our consumers can afford to pay and at which our producers can afford to sell. There are too many costs, or charges, by the units in between the producer and the consumer. Among these units we, the port authorities, are one. The economies that apply to us will also apply to the other units in between the producer and the consumer. Since we—state, city or district authorities—operate without profit, we might, with pride, pat ourselves on the back and say that our unit is not one to be criticized. We may point our fingers of righteousness against all of the other units, but if we do we are not serving as we must.

As a part of that great distributing system, we must, individually and collectively, do something to improve our services and one of the best places to start is to reduce so-called competition, especially if it comes under the heading of the unnecessary duplication of services and facilities. In recent years the various cities, by their Chambers of Commerce and other civic organizations, have striven to show some kind of supremacy over other cities by showing the superiority of their ports, printing voluminous statistics, figures of tonnage, etc. About the only good these statements have done is to make the people port-minded. Were it not for such publications, I fear that too many people would neglect port considerations entirely. I claim that ports are too important to be neglected. As to the published figures, they have but little meaning. I do not suppose that there are ten persons to a thousand that know the difference between a cargo ton and a

not registered too. Still, I have seen some mighty weird statements based upon one or the other, and frequently on both, without care as to the difference. In order to explain what I mean, I might cite an example and name two ports so often compared. I refer to Los Angeles and San Francisco. So far as San Francisco is concerned, we have no quarrel with Los Angeles at all, and I believe the same is true about Los Angeles. Strangely enough, we who handle the affairs of the ports are the very best of friends. There is none among us who does not cooperate with the others, such as we are doing right at this time. If there is anything that any other port in the United States wants from us in San Francisco they can have it cheerfully. And we receive exactly the same kind of treatment from them. Then, who is it that gets all excited about the relative merits of one or another port? Far be it from me to criticize any organization, but most certainly the rivalry, so-called, exists only in the fertile brains of people less conscientious of the cooperative spirit than those of us directly connected with port work.

If any of us were placed in the position of finding a natural outlet for the handling of the farm products, let us say, of a great producing area, we would most naturally explore all natural bays and harbors as close to our production as possible. Once found, we would develop the facilities as demanded by the commodities we were charged with shipping. The development of the harbor would depend entirely upon the needs of the producing area, and that producing area would demand the most efficient facilities to be operated in the most economical manner. Well, gentlemen, that is all there is to it. That is exactly the way we should operate today. We must do nothing more than furnish the efficient and economical means for the handling of the production of farm and factory tributary to us.

Getting back to the comparisons between Los Angeles and San Francisco, perhaps I can illustrate my meaning. Let us take San Francisco first, because it is the oldest port. It was discovered in 1775, which, by the way, was quite a year for young America. Spain had a pretty good grip on this part of the world. She realized that its development would mean much to her. She already knew of its productivity and had mighty reasonable ideas about the potentialities. This country was producing grain and raising cattle. Russia, England and France had their eyes on this attractive district, but in 1841 the first American warship, the sloop *San Luis*, sailed into San Francisco Bay and the *Portsmouth* belched her 21 guns of salute as San Francisco was transformed into an American city from a Mexican pueblo. From that time on this Bay became the most important point on the West Coast of North America. Because of the rich lands of the two great valleys, the Sacramento and the San Joaquin, the port grew and grew. Because of these developments, the transcontinental railroad was developed. In every case the developments were made to meet the demands of the commerce. And they should be continuously made, for the same reasons and no others.

Los Angeles was another Mexican pueblo. There was nothing much developed around there. However, as San Francisco became important, explorers became more interested in other parts of California, and soon Los Angeles was on her way to becoming one of the great American cities. It was, however, many years before people realized that nature had also endowed her with wealth beyond imagination—"Black Gold"—oil was discovered. With this discovery, plus a climate of great attraction, Los Angeles became the fastest growing district the world has ever known. With her growth came the demands for a harbor, a most natural demand. But this district had no natural harbor such as San Francisco Bay; so with the energy that is hers, she built a grand one, which is no her great credit. As the ships of long ago came into San Francisco Bay for the products of her hinterland, so did ships go into Los Angeles for her products. And naturally, as the ships came into Los Angeles Harbor for her products, they took into harbor the things that Los Angeles consumed. That is the most natural kind of development. What then is there that Los Angeles is taking away from San Francisco, as some would have us believe? Los Angeles Harbor serves its needs and San Francisco Harbor serves its needs. Los Angeles and the hinterland will demand that its harbor provide at all times the facilities that are required for her economic development, no more and no less, and San Francisco will do the same. It is to the interest of both that they expand and become more efficient because they serve all the hinterland that is tributary to them.

I hope that I have, by this comparison, emphasized the all-important points, namely, that every port must provide the facilities that the commerce demands, and secondly that the handling of the commodities across the docks must be the highest in efficiency and the lowest in costs, and thirdly that there is no such thing as competition.

When we speak of providing facilities, we must have available the finances to meet the demands, and this is something that must eventually be worked out on a more equitable plane. I mean no criticism when I speak of the tax-levying authority of the port districts, whether they be city, county or state. The fact still remains that the port serves not the immediate environs of the city, nor the bay, nor the district, but the entire nation. This is the phase of the port responsibilities as they relate to intercoastal and foreign commerce. If America is to hold its own, and it will, as a maritime nation to regain the glory of its past, all major ports must be in the financial position to provide the facilities to keep abreast of the maritime development. Today we are entering a new era of ship building. Soon we shall have much larger ships than we now have. These ships will *demand*, proper facilities. The major ports will have to provide them whether they want to or not, or whether they have the money for the added facilities or not. Where is the money coming from? The answer has to be that the people whom these ships and ports serve must provide it, and that means all the people of the country. Certainly there will not be enough revenue from the ships themselves to ever pay the costs of the new facilities. So what? The taxpayers will have to dig deep into their pockets, and I do not see that you can limit this "digging" to the relatively small number in the close proximity of the harbors themselves. At the beginning I said that the thought was running around that we might have Federal control of all ports. I am not advocating it at this time, but it is certainly something to think over.

I have said on many an occasion, and I repeat it here, that all the tolls on the docks and in the harbors must be at the very minimum. There is, as we all know, a movement well started in the Northwest to associate all terminals so that there will be some kind of general regulations for the common good. I am somewhat inclined to believe that such organizations are a good thing, but they have their weaknesses. Frankly, if the services at the ports are public services, not for profit, how can we agree on the regulation of charges if some of the facilities are privately owned and, therefore, must work on the profit basis. Do not misunderstand me. I am not opposed to businesses on the profit system. I am quite in favor of them, but I cannot see how the public service by the city or state and the private operators can come to any understanding because their bases are entirely different.

Also on this subject; I often wonder if it is quite fair to demand such rates as will give a profit on facilities that are recognized as economic errors. My contention is that if one port or another has made a bad investment, it is not entitled to the rate support of the other ports in order to make it pay. And, again, it is not right that the city or state port develop facilities and absorb losses year after year and then permit a privately owned facility to take the business away from it after the business has grown to such proportions.

To sum up, then, the duties and responsibilities of ports I would say that since we render a public service, that service must be all that the designation implies.

We recognize that, above everything else, we owe to all the people our most sincere efforts toward efficient and economic port management.

Since we must meet the demands of commerce by providing the proper facilities, we are not to be considered competitive.

Since we operate without profit, it is wrong to accept undue risk in building facilities, especially if there are facilities available within the same port area. Such duplication serves only to divide the business and, therefore, increase the handling costs and probably demand a higher taxpayer contribution.

To be an important link in our great national and international distributing system, assuming leadership when necessary—the object being to assist the producer in delivering his products to the consumer at the lowest possible cost.

Never to be the obstacle between the producer and the consumer by inefficiency or excessive charges.

We who are in between the producer and the consumer, and I mean all of us, including the rail carrier, truck, stevedores, and all others, as well as ourselves as terminal managers, have no right to exact from the product more than our share—we have no right to place ourselves in the position of determining whether or not the producer can sell to the consumer.

It is a definite part of our duty to make for such economy as will permit the producer to distribute more of his production. (Applause.)

PRESIDENT ABEL: Thank you very much, Mr. Marias, for that fine paper. There is a lot of good information and food for thought in your remarks.

We have a discussion of Mr. Marias' paper by Captain Brennan, Director of the Port of San Diego. Captain Brennan. (Applause.)

CAPTAIN BRENNAN: Mr. President and gentlemen:

I was asked to prepare a paper of discussion on Mr. Marias' paper. However, I didn't receive a copy of his paper until the day before I left San Diego, so I prepared one of my own. Then, after I received Joe's paper, I made a few short notes on it. I have both of these papers. Which one shall I read?

PRESIDENT ABEL: Read both of them if you have time.

CAPTAIN BRENNAN: All right.

Duties and Responsibilities of Ports

Discussion by J. W. BRENNAN, *Port Director*, Port of San Diego, California

Today being the 15th of August, and the Convention scheduled for the 23rd, and having not as yet received a copy of Mr. Marias' paper, I will not be able to discuss the points set up by him in his paper. I am, therefore, going to confine my brief remarks to the situation as I see it.

The suggestion of Mr. Marias' paper, "Duties and Responsibilities of Ports," I think is a little misleading. I believe it would sound better if it were "Duties and Responsibilities of Port Authorities." In my remarks I am treating the subject on a basis of "Value of a Port and Duties and Responsibilities of Port Authorities."

There is no time in our national life when the values of ports and the duties and responsibilities of port authorities is not a prime factor in our transportation system. International relations are constantly developing, and a single nation can no longer exist without foreign commerce. American markets circle the globe, and the United States is a lucrative market for all nations. Our foreign commerce, in the main, depends upon our domestic ports of interchange; and as I said before, the value of ports and the duties and responsibilities of port officials cannot be underestimated.

Let me cite briefly a few figures to emphasize the rapid progress that we have made in the handling of foreign commerce. The annual report of the Chief of Engineers, U. S. Army, shows during the calendar year 1921 our total import and export commerce amounted to 92,664,606 short tons. This traffic increased for the calendar year 1937 to 114,412,926 short tons. In other words, our total import and export commerce for all ports in the United States increased 23 per cent from 1921 to 1937.

Now what happened on the Pacific Coast? The United States Maritime Commission, Division of Research, Annual Report No. 275, shows that United States Pacific ports located in Oregon, Washington and California handled during the calendar year 1921 only 6,475,845 short tons of import and export commerce. However, in 1937 these ports handled 17,093,014 short tons of import and export commerce, or an increase over 1921 of 164 per cent. *Let me emphasize this point: During the sixteen-year period our total import and export commerce for all ports in the United States increased 23 per cent, while the same type of commerce handled by Pacific ports increased 164 per cent.* This, to my mind, is impressive, and indicates the value of ports and how important are the duties and responsibilities of port officials, particularly on the Pacific Coast.

In the domestic field, Coastwise, Intercoastal and Inland Waterway service, we believe, offers the lowest economic transportation cost. Land transportation has in a measure been streamlined. Water transportation must meet this competition if they hope to continue to carry their share of tonnage. Here again the value of ports and the duties and responsibilities of port authorities are an important factor. Port facilities will probably never attain perfection; there will always be room for improvement. Conditions are rapidly changing, and the cost of handling cargo at ports has increased. The necessity for labor-saving machinery is ever before us. The value of ports was never greater, and it is our responsibility and duty, as port authorities, to keep pace with modern progress and maintain our port establishments at the highest degree of efficiency.

Port functions are both physical and economical. Man, with all his genius, has not as yet invented a practical vehicle sufficiently amphibious to eliminate the necessity of transferring cargo at ship side between land and water carriers, and until there is no longer a necessity for transferring such cargo at ship side, port and portal facilities will continue to play an important part in the handling of state, interstate and foreign commerce. From an economical standpoint, ports should be self-sustaining. This, I feel, is a cardinal principle that should be attained if they are to justify their existence. To reach a self-sustaining port level, three vital factors are important:

First. Uniform interpretations and application of regulations and charges for comparable services, especially for competitive port facilities.

Second. Compensatory rates for services rendered sufficient to meet operation, maintenance and fixed charges when given normal tonnage commensurate with capacities of port facilities.

Third. The source of Port Revenue should be distributed in accordance with services rendered.

I cite these three points because the port plant is a vital adjunct to water commerce, and the normal revenues should be sufficient to justify the capital investment, otherwise the value of a port to a community lies in savings in freight rates due to the existence of the port.

I have mentioned briefly the value of ports and the importance of port management with relation to domestic and foreign water commerce. The same situation is even more pronounced with respect to the local community and territory that a port serves. It is conceded that the density of population in the United States lies in the territories served by or adjacent to water commerce. Water commerce and ports are synonymous, and the local community and the territory served by a port is entitled to enjoy the commercial heritage created by a port facility.

The reason for this is readily found in the economic necessity for low-cost transportation. Congressman Calmer, in debating S. 2009 in the House of Representatives on July 21, hit the nail square on the head when he said: "I point out to an intelligent Congress, that the very fact we have these waterways to furnish this cheap transportation, gives you a leverage—a club, if you please—to hold over the heads of other forms of transportation to keep down the transportation charges." I think we all concur in this statement with respect to state, interstate and foreign freight rate levels, and that it is the duty and responsibility of port officials to maintain and perpetuate this low rate-level insurance by operating our facilities at a high standard of efficiency.

In principle, it affords an economic guarantee in the same sense as does the Sherman Act. It maintains and guards the fundamentals of competition. Were it not for our ports and water commerce, local communities and territories served by ports could not enjoy the low-cost transportation which now prevails. This low-cost water transportation is an economic necessity, and is the greatest single factor in our domestic commerce that curbs rate inflation. Water carriers have opened markets for producers and distributors of commercial products that would not otherwise be available. Ports and water carriers offer producers a low-cost transportation and many types of commodities which could not stand the higher cost rail or truck tariffs, and permit economical competition. Every port has its local industries, many of them large ones, that are located at or adjacent to shipside because of the economic low-cost transportation factor afforded by water commerce, and the life of many of these industries depends upon such transportation.

You are all familiar with the famous Pacific Coast Fourth Section application decided by the Interstate Commerce Commission on December 15, 1932, when the railroads sought Fourth Section relief in Pacific Coast port-to-port rates because of water competition. Would the railroads have shrunk their rates voluntarily if water competition were not in existence at that time? The answer is definitely NO. These depressed rail rates still prevail, and they will continue so long as Pacific Coast ports and the threat of water competition exist.

Therefore, if Pacific Coast ports serve no other purpose than to insure the lowest compensatory economic rate levels, they are of inestimable value to their local community and the territory served. They do a great deal more than that, however; they represent a vitally important transportation facility that is necessary to our local, state and national economic existence.

The value of ports and port facilities is vitally important to our commercial life, and the responsibilities of the officers vested with authority to maintain and operate these facilities are manifold. This situation is particularly true, on the Pacific Coast, with the prevailing trend of foreign commerce gradually expanding towards South America and Asia.

Summed up briefly, on our shoulders rests the responsibility of maintaining Pacific Coast port facilities at a high degree of efficiency. Larger and faster ships are on the Ways. Since the enactment of the Merchant Marine Act of 1936, the Maritime Commission have built, are building or are causing to be built, more than seventy modern ships. This is only the beginning of an ambitious program to rehabilitate our Merchant Marine. Our ports and their facilities must keep pace with this progress, and the responsibility to do so is a duty that we must not and cannot shunt. (Applause.)

This is the paper I prepared for the discussion of Joe's paper. It isn't very long:

I received Mr. Marias' paper the day before I left San Diego, and I think he has treated the subject very thoroughly. He has, however, brought out some points that I would like to discuss.

I agree with Mr. Marias that port facilities are a public utility and port functions are a public service, regardless of whether the port is under private, city, or state control. I also concur that port facilities are connecting links between land and water transportation, and that the public are entitled to receive the highest type of efficient and economic service.

Granted, it is necessary that a port meet the demand of its tributary commerce, it is likewise necessary that a port meet the demand of national and foreign commerce. It costs a lot of money to produce and maintain a port and its facilities, and I think the operating and maintenance costs should be borne by those that use the facilities, and should not be a burden upon a city, district, or state tax territory. By this I mean that city, county, or state taxpayers should not be expected to produce and maintain such facilities for the accommodation and use of land and water carriers and producers and consumers in other states and other countries who use the facilities. A port facility is not, therefore, comparable to a city water system. Port facilities are a necessary utility to land and water transportation and are comparable therewith. The cost of service rendered, therefore, should be compensatory, and should be spread equitably between all the users thereof.

I agree with Marias that all ports should be developed for the purpose of rendering public service. I disagree with him, however, on the point that there must be no competition. We are bound to have competition as long as competition in transportation service exists. Competition, however, should be restricted within the limits of "public convenience and necessity." Federal regulation of marine terminals and port facilities is, I predict, not far distant. Under the Interstate Commerce Commission and the Civil Aeronautics Authority, land and air carriers must show "public convenience and necessity." Similar provisions for water carriers are written into S. 2009, which is now pending.

If and when the Federal Government takes over the regulation of marine terminals and port facilities, the same provisions requiring proof of "public convenience and necessity" will probably be required. When that time comes the authors of port projects may find it necessary to prove that a port or port facility is in the interest of "public convenience and necessity" before the facility can be created, thereby eliminating a lot of unnecessary and wasteful competition between ports. To say that there must be no competition is to denounce something that actually does and will continue to prevail, regardless of whether we want it or not, and whether it be an evil or a blessing in disguise, we must recognize it as a definite factor which should be properly regulated in the interest of the convenience and necessity of the general public.

I did learn at today's luncheon that some ports are robbers, but we do not charge for our services. Thank you. (Applause.)

PRESIDENT ABEL: Thank you, Captain Brennan. I am glad you are so generous in San Diego. I would like to have a discussion from the floor, gentlemen, on this very important paper. I think there is a lot to be said on it. May we have further discussion from the floor?

MR. GEORGE W. OSGOOD (Tacoma, Washington): I can get two main points from Mr. Marias' paper. The first one is that he believes that if it is necessary to create proper service by a public port authority to make it commensurate with the development of the district it will be justified in not charging any fees for the operation of that terminal.

The second thought is that he does not believe it possible for private terminal operators and public terminal operators to work harmoniously together.

On the first thought, I want to say that I happened to be a member of the committee of the American Association of Port Authorities that met with Mr. Eastman of the Interstate Commerce Commission when he was working so ardently trying to get his Wharfinger Bill made a law. He plainly stated to our committee that if he was successful in having this Wharfinger Bill adopted, that the main purpose of it would be to see that all ports, both public and private, charge for their services commensurate with the sustaining powers of the port. In other words, the charges must show a profit to take care of all charges—not only the operation but the interest and the redemption of bonds.

Now, on the second thought, I think we have proven in the Pacific Northwest, that it is entirely feasible for both port authorities and private operators to work together harmoniously. We have accomplished this through the Northwest Marine Terminal Association, and I think that all of the Northwest ports and the private operators agree that we have worked harmoniously together. Since that has been accomplished, we have made more money to keep up our ports, and we have not had the bickering and the cutting of rates and the misunderstandings and such that we had through all the previous years. It was very discouraging to everyone concerned.

PRESIDENT ABEL: Thank you, George. We are glad to have your thoughts on the subject. We, here in California, can learn something from the reports you have made. Any further discussion?

MR. PHILIP H. CARROLL (Portland): I understood from Captain Brennan's paper, that he feels the Federal control of the ports is more or less of an accomplished fact at some future date. I don't see why it should be. I don't see that anything can be gained by Federal control of the ports. I think the ports are capable and I think there is too much Federal control of everything in this country. I think the ports are capable, as Mr. Osgood stated, of getting together in groups and tak-

ing care of their own particular problems in their own area. I would like this body to go on record as it has in the past and oppose any attempt of Federal regulation of the ports and more especially as has been tried at this last session of Congress to regulate through the Interstate Commerce Commission. Now, the Interstate Commerce Commission has, for some time, been operating and taking care of the railroads, regulating their bond issues, and look at them today. They are in a mess. With all their control and power, they have not accomplished a thing. They haven't kept them from bankruptcy, or kept competition with buses and so forth. They are in a bad plight, and I am sure that the ports of the country will get in just as bad a mess if they are put under I. C. C. control. If anything should control them, it should be the Maritime Commission.

CAPTAIN BRENNAN: I agree with what Phil said. But Federal control is an issue we can't dodge. The difference between the ports and the railroads is that the ports have to look to the taxpayers. They dig down and make up the deficiency. But the railroads can't do that. They have to go to the bond holders. The ports today are in the same condition as the railroads. Our great city of Los Angeles has to dig up about one million and a half dollars a year deficiency, and you know how much business Los Angeles does.

The point I was trying to put over was this. There is no getting around the fact that competition does exist, and Federal control would eliminate that unnecessary and wasteful competition between ports. Then, the ports could form an association similar to that in the Pacific Northwest and that would be the guidance for the charges. It is not possible to amortize every port investment on the same basis, but we should get somewhere near an equal standard, and the port charges, in my estimation, should amortize the investment. For instance, down in San Diego there is an investment in port improvements of some six million dollars. That is paid for by the community in San Diego. I can live around there and enjoy the benefits of all the facilities of that port and the taxpayers of San Diego are paying for it. It is similar to the situation you had at the luncheon today. He gets sore as the devil because he can't come into San Diego and have his slop carried off for nothing. He should pay for it because he is the fellow who is enjoying it.

MR. MARIAS: I confess a little ambiguity in my treatment of "competition" and "no competition." I really had reference to the commerce that is directly tributary to the ports—such as we find in dividing the tributary commerce among the several ports such as we have in the Bay Area. (Aside.) This ought to start a fight. (Laughter.)

In this Bay Area, we, the ports of the area, draw from the two great valleys of the Sacramento and the San Joaquin. Now, in that sense, I was thinking of competition. I say it is foolish for each of the several ports to duplicate facilities. Let me make myself clear. Every major port has a certain service to render to its contiguous territory. In this field, I claim there must not be any competition by the duplicating of facilities because it means that the produce of that district must carry the additional cost that unnecessary duplication means. I, of course, recognize that there is competition in the wider fields, such as the Orient and also in the eastern part of the United States, for export business. However, this competition should be confined to the points of origin and not develop in the ports themselves.

When I speak of low rates, this is what I mean. We, who are terminal operators, are operating public service terminals and, therefore, the cost of passing the freight through them must be the very lowest possible, commensurate, of course, with the costs of efficient operation and upkeep. We are merely one link in a system of distribution. Picture in your minds the point of origin and then in your minds carry the items through the various links to the final point of consumption. I do not know how many links there would be in this chain, but like the old adage, this chain is no stronger than its weakest link. Therefore, it behooves us all to look at the wide picture and not let our own problems sway us to the detriment of the economic distribution.

The ocean carrier and the stevedore are two of the links and they do not get along. I am not ready to discuss which is right and which is wrong, but neither one of those institutions has the right to bottle up the whole works. And therefore, we, as just one of those links, and performing a public function and a public service, must try to look at the whole problem and do our best not to make such charges as would help stifle commerce. One other thing and then I will stop.

I believe that port charges should be based upon the principles of the N. R. A., and I also believe that all charges and services should have the same basis which simplified means that every transaction is entitled to a fair profit, but this principle must be understood to be a principle based upon efficient service and, therefore, preclude the possibility of demanding a fair return for a service inadequately rendered, or over a facility which is admittedly an economic mistake.

PRESIDENT ABEL: Thank you, Mr. Marias, for those thoughts. Is there any further discussion?

CAPTAIN BRENNAN: He talks about the port charges stifling the transportation. Does he realize that the port gets practically nothing for the service rendered when you figure out the cost per ton delivered? In some cases it is ten cents a ton. The stevedore gets $1.10 an

hour and the steamship company gets so much per ton, depending on how far it is carried. And Joe gets ten cents. That's not holding anybody up.

MR. MARIAS: The point that I am making is that we should be very careful. It is our duty that we do not overcharge, and that we do it at the most economical price.

PRESIDENT ABEL: If there is no further discussion we will proceed.

The next paper is Paper No. 2, "The Relationship of Industrial Plants to Port Terminals," by Fred D. Parr, President of the Parr-Richmond Terminal. Mr. Parr. (Applause.)

MR. FRED D. PARR (Richmond): Mr. Chairman and gentlemen:

First, I want to express my appreciation at being permitted to take part in this program. I am not a voting member of the Pacific Coast Association of Port Authorities, but I am happy to have fellowship with you. I want to record my conviction that these conventions, not only the Pacific Coast Association of Port Authorities Convention, but also the California Association, with its meetings under the leadership of Mr. Arbogast, are doing a very fine service. I would like to see the private operators in a closer relationship with their older and bigger brothers. We profit by this association, and we want to play the game with you in a very fine way.

Now, the subject assigned to me is:

Relationship of Industrial Plants to Port Terminals

By Fred D. Parr, *President*
Parr-Richmond Terminal Corporation
Richmond, California

The location and operation of port terminals constitute important factors determining the success or failure of many industrial enterprises. The significance of such terminals to industry is not limited merely to the facilities or services immediately furnished or performed in the handling of goods. Less direct but no less definite is the effect of the terminal as it governs other connected elements in the transportation chain.

For the purposes of this paper, which must necessarily deal with generalizations, the term "port terminals" may be used in a sense to include generally those terminals which cater to the public for the handling of cargo that moves inbound or outbound by water carriers. In considering the relationship between such terminals and industrial plants, it will be useful to point out three particular classifications of industrial plants to which port terminals assume special importance. The first, and broadest, of these classifications includes all industrial plants that, whether or not situated in the immediate vicinity of a terminal, are located at least within the rail switching limits of a port terminal which is served at terminal rates by ocean carriers. Next we may consider those plants which are located not only within the switching area of the port terminal but in close proximity to the terminal; and thirdly, those industrial plants which, wherever situated, properly require ship's side storage of cargo in large volume.

Plants subject to the first of these classifications, *i. e.*, those located within the switching limit area, profit by the savings in rail or truck charges prevailing in such area, as compared with the rail or truck charges which would be incurred if the cargo had to be shipped to or from a terminal beyond the switching limits. In this way these plants benefit directly from their location within the switching limits of a particular port terminal.

Yet it is not always that particular terminal which reaps the b
of the savings which it makes possible to the industries wit
switching limits. Certain industries may route their cargo th
terminals outside the switching area and permit the steamship
panies (or possibly the other terminals) to absorb the differe
switching charges for the benefit of the industries rather than c
carriers to deliver the cargo or accept it at the port terminal
the switching area. In this way that terminal loses its proper sh
the benefit of the competitive advantages which it has in larg
created for the industries.

Nor is it such port terminal alone which may suffer fr
undue use of switching absorptions. Because of competitive
tions, these absorption practices may eventually be extended to
the difference in land carrier rates to plants that are far removed
port terminals, thus placing a severe burden upon the steamship
panies (or the other terminals) which must bear the absorption

And in the long run, even the industrial plants themselv
suffer from artificial absorption practices. When cargo is di
from the port terminal through which it should normally flow
terminal may find itself without sufficient volume of tonnage to
its continued operation on a profitable basis. Furthermore,
event such port terminal should cease to have sufficient tonn
thereby the ocean carriers in calling for or otherwise handling
means through its facilities, then the carriers may eliminate or s
restrict their services at terminal rates at that terminal. Such a
tion would normally be followed by the elimination of the c
absorptions of rail or truck charges to other terminals. The
quence would be an increase in transportation costs to the
trial plants.

Now we may refer to the second of our classifications of
trial plants considered with reference to port terminals, name
plants which are located not only within the switching area
port terminal but in the close proximity of the terminal fa
One reason for establishment of a plant immediately adjace
port terminal may be the necessity of direct cargo movemen
tween water carriers berthed at the port terminal and the in
plant. As examples might be cited a grain elevator, an oil pl
any other plant with conveyors or pipelines connecting the
berth with the plant.

Even apart from cases where there is the necessity of such
connection between the plant and the terminal dock, there ar
instances in which substantial economies, in labor costs or oth
may be effected by the location of industrial plants in close pr
to port terminals. This seems to be particularly true in the
the processing and storage of dried fruit, the compressing and
of cotton, the storage of sugar or wool, and other compara
dustries.

An industry of the general nature last referred to may b
with the question whether it would be economically prefe
construct, maintain and operate its own private terminal
rather than make use of the port terminal. Except where th
tremendous volume of business, it is usually cheaper to use t
ities of the public port terminal.

Generally speaking, the port terminal will be served wit
frequent and diversified steamship services than would be a
at a private dock. Also, the port terminal will be more co
have terminal steamship rates and the absorptions of port cha
carriers which are often made at public port terminals. The
of these costs by the carriers removes a considerable burden fr
industrial plants.

The third, and final, classification of industrial plants to b
in connection with the functions of port terminals consists,
be recalled, of those plants, wherever situated, that properly
ship's side storage of cargo in large volume. The storage
lumber, fertilizers, bulk salt, sand, coal, rolls of paper, grain
sacks, etc., is an essential part of the production and distrib
these commodities; and storage at ship's tackle offers a spe
vantage in the concentration of the commodities in large vo
a point where they are available for the prompt filling of
orders for shipment. There is no reason why port terminal
not provide this advantage to the industrial plants, for prop
pensation, in cases where space is available for storage at the
without interference with the normal flow of its transit cargo

In any examination of the relationship between industri
of whatever particular category, and port terminals, it is im
to overlook the effect of regulation of the practices and rat

Treasure Island





February 1936

February 1939

PHOTOS BY
CLYDE SUNDERLAND
OAKLAND, CALIF.

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Convention delegates will long remember Pacific Coast Association of Port Authorities Day on Treasure Island. Here the stately Tower of the Sun stands guard over the pool in the Court of the Moon—



—where at night the Fountain of the Evening Star cascaded brilliantly illuminated arches of water, and the majestic tower was transformed into four hundred feet of stately elegance.

port terminals by public authorities under the laws applicable to public utilities. If this regulation is to be in the interests of the industrial concerns that patronize the terminals, as well as the public as a whole, it must achieve a proper balance between the policy in favor of uniformity and stability in the terminal business, on the one hand, and the policy in favor of free competition for public patronage by fair means among the respective terminals, on the other hand. The author of this paper, for one, feels that there has been some tendency in recent years to give undue weight to the first of these two policies at the expense of the latter. There is refreshing evidence of a shift in the attitude of both governmental authorities and the general public in the direction of a clearer recognition of the salutary effects on open and honest competition.

A further point which should be specially emphasized while we are on the subject of the public regulation of port terminals is that the effects of any such regulation should apply uniformly and without discrimination as between (1) privately owned terminals and (2) terminals owned and operated by political units, such as municipalities or specially constituted port districts, with which the privately owned terminals must compete. Certainly, in the absence of most unusual circumstances, there can be no justification for fastening a tight rein of restrictive regulation upon one terminal when another competing terminal, offering substantially similar services and facilities to industry, is, because of a difference in legal status resulting from differences in ownership and organization, left to be a law unto itself.

In California, for example, privately owned terminal facilities are subject to regulatory jurisdiction of the State Railroad Commission, whereas, by virtue of limitations in the State Constitution, the Railroad Commission is powerless to enforce its orders upon the competing terminals which are municipally owned. It is submitted that this condition ought to be changed. Unless this can be accomplished by amendment of the State Constitution so that regulation of all these competing facilities may be centralized in one body, representing the interests of the general public, then the Federal jurisdiction over interstate commerce should be invoked in such a way that a measure of regulatory stability may be achieved through some agency of the Federal Government which will be able to control both types of port terminals.

The writer has constantly advocated a universal and uniform regulation of port terminals, both privately owned and publicly owned, and earnestly feels that the attainment of such an objective is necessary for the benefit not only of the various terminals themselves but of the industries and other interests which they serve.

Pending the attainment of this objective, there is one immediate consideration which the managers of publicly owned port terminals should be called upon, by those to whom they are responsible, to make. They should adopt and abide by a policy of not altering their rates or rules of operation except upon reasonable advance notice to the public. This is legally required of the privately owned terminal operators. If municipal terminals are not similarly bound, not only will the private operator be unable to compete upon fair terms for his share of the traffic but, in addition to that, discrimination will be prevalent among competing industrial plants. One group of plants, employing private public utility facilities, will be subject to rates and regulations that are fixed by, and may not be changed without the approval of, a public utility commission; other plants, employing port terminal facilities controlled by municipal bodies, may, through negotiations with such bodies, obtain rate modifications without notice, thereby being enabled to quote special prices to favored customers or to secure a particular volume of business.

Under present-day conditions, the operation and maintenance of ocean terminal facilities has become a complex and costly affair. It is a responsibility of terminal executives to give efficient, economical, dependable and specialized services to industry.

Industry, on the other hand, must constantly be educated to the importance of port terminals. The industrialist is today confronted by unprecedented problems of production and distribution. When he has the services of a well-managed port terminal at his command, he is relieved of many burdens that otherwise would be bothersome and expensive. Whether he takes full account of the bearing of this factor in the transportation field may have decisive force in determining his ability to meet his own competition with success.

In the broad view, it is the function of port terminals to enable manufacturers and producers to reduce the cost of their materials and the expense of distributing their products to consumers. In the performance of this function, port terminals render to industrial plants an outstanding service. (Applause.)

PRESIDENT ABEL: Thank you, Mr. Parr, your paper reflects wisdom gleaned from many years of terminal operation.

We have a discussion of Mr. Parr's paper by Colonel Allin of Stockton. Colonel Allin. (Applause.)

COLONEL ALLIN (Stockton): Mr. President and gentlemen:

It is quite an honor to occupy this pulpit with such a distinguished gentleman as Mr. Parr, but I am interested in this matter of competition which has been mentioned, and before reading my prepared discussion, I thought I might refer to it, because it seems to go through all of these papers very definitely as an underlying current.

Competition does exist. It is just there. We all know that the railroads are regulated and yet they are strictly competitive. We recall how the competition was removed during the days of the railroad administration, and how the type of service went down. I think it is very human and very natural that those connected with old and established ports should say that there should be no competition, and those new ports striving to gain a foothold should say that they should have a right to compete, and probably just so long as we have federal laws and agencies to allow for new ports we are going to have that situation within the bounds of reason.

Relationship of Industrial Plants to Port Terminals

Discussion by COLONEL B. C. ALLIN,
Director of the Port of Stockton

Mr. Parr, in his presentation of this matter, has analyzed the relationship between industries and terminals in a very comprehensive manner, and I would subscribe to all that Mr. Parr has said. However, it would seem that there are certain conclusions which might follow from an analysis of this situation.

Following Mr. Parr's classification of the relationship, we might take one extreme type, such as offered by San Francisco, where there is no industry located on a pier, but rather each steamship company operating its own pier, with industries located at some distance from the waterfront in the city. With this might be contrasted a ship-side industry with its own wharf, such as the sugar refinery at Crockett, to which all the vessels must go to lift cargo of this industry.

These might be said to constitute two extremes in operation, and the question might arise as to which in the long run is the better for all concerned.

In the case of the San Francisco arrangement, the steamer would call at only its own home berth, and all expense of moving the freight to or from the ship would be borne by the industry.

In the case of the example at Crockett, all of the expense of moving is borne by the ship, and none by the industry.

Is it not possible that some compromise solution in between these two extremes may offer advantages both to industries and to shipping?

For the sake of discussion, I would consider in such a compromise class the terminal at the Port of Stockton. In this particular case there are eight steamer berths surrounding, in a semicircle, a warehouse area which contains twelve sprinklered brick warehouses for general commodities, and also a grain terminal capable of holding 50,000 tons of grain. There have been at one time as high as 90,000 tons of merchandise stored in this area. The method of operation is as follows: a canning industry, or other industry which manufactures a product, moves the finished product, upon its completion, to warehouses on the property of the Port of Stockton, where the goods may remain in

storage for an indefinite length of time. If and when an order is placed for a shipment to some point by water, the shipment is then moved by terminal labor and equipment from the warehouse to the ship-side berth.

On the other hand, from the steamer's standpoint, let us consider that the steamer loads at only one berth, and freight from all of the warehouses, as well as straight transit freight, is moved to the berth of the ship. In the case of steamers loading grain, they are placed at one of the two berths which are served by the grain terminal conveyors, thus making it possible for those particular steamers to load all of their general cargo and grain without moving. In this type of operation, the shipper has the convenience of storing his merchandise practically at shipside, with a probable saving in transportation costs, as well as convenience in moving his goods to the ship berth when they are ordered out.

Furthermore, from the steamship angle, this type of terminal makes it possible for the ship to load without the expense of moving to another berth for a portion of the cargo which is to be loaded within that one port.

It would seem that some such compromise would hold definite advantages for both steamship operator and shipper. By the same analysis, it would follow that the separate wharf or the wharf of an individual industry is the least desirable, unless it be operated by a type of industry which requires special storage or handling facilities, which would not be readily available at a regular transit ship berth.

It has been my feeling that at times industries have been a little overenthusiastic in providing their own ship-side facilities, and that in making their arrangement for waterfront operation they have overlooked some of the commercial aspects which, from a steamship standpoint, hinder their successful operation. When an industry provides its own facilities and expects the steamer to call at those facilities, it naturally presupposes that there will be a sufficient amount of cargo offering to warrant the steamer making the shift, but if this is not so, then the smaller shipments of the industry will have to move over other and distant wharves, so that the system will fail to that extent.

Then, from a financial standpoint, the construction of private wharves by industries is often questionable. They may feel that owning their own wharf gives them the benefit of loading at a lower cost, but in very few instances is this probably the case. When the cost of dredging and the cost of the wharf are considered, with amortization and interest on the investment, it will be found to correspond to a very expensive tollage item against the industry, unless it is moving its freight in bulk in tremendous quantities. With port charges as low as they are in this country—disastrously low in many cases—it would seem the height of folly for most industries to provide their own terminal facilities rather than to use those provided by others on a pay-as-you-go, or tollage, basis.

For the above reasons, it would be my conclusion that except in quite special cases, an industry would be foolish to supply its own facilities, but would do better to depend on a public berth.

Then there is one additional conclusion which might be reached regarding the industry which locates on terminal property. It is often said that competition is the life of trade, and it would seem that an industry would be safest as to service and charges if it is not too wholly controlled by any one ship berth or terminal. If an industry is sufficiently close to a terminal to provide reasonable access to the waterfront, and yet to allow reasonable operation over a competing terminal, the manager of that industry will probably rest assured of proper treatment in his terminal operations, protected to him by competition. For this reason, it would seem that any industry which locates on port terminal property should very carefully, in its contractual relationship with the terminal, protect itself in order to obtain all the benefits of competing terminals.

Much has been said from time to time regarding new port development, and occasionally the operators of existing wharf facilities and shipping interests are prone to look upon new port development as purely political and unsound. It is not my desire here to argue that point, but merely to state that just so long as we continue to have progress in this country, and improvement of methods of transportation, we may still expect, as and when proper, to find new port development, and thus it may arise that an industry which ties itself definitely to one section of a waterfront may find itself undercut by a competitor located further back from the waterfront but in a locality which allows him, on a more advantageous basis, to use some new, and to him, previously unforeseen port development. Naturally, port development is greatly dependent upon geographical factors, but it would appear that any industry definitely tying itself irrevocably to any one section of the waterfront should consider carefully the physical aspects of its section of the country and the possibility of future port development in adjacent areas, in order that it might realize fully and give consideration to the fact that its future operations might be subject to some commercial hazard, if such development should ensue.

If an industry were carefully to consider this point, it is very probable that in some cases it might therefrom reach a conclusion not to construct on the waterfront, but to construct at some distance from the waterfront, where strategically it could use any section of the waterfront which might then be available, or even at some future time. This point would not, of course, apply to the mere storage of commodities at ship-side or at a terminal.

In the operation of the Port of Stockton, the storage accounts of numerous industries have been mentioned. Even if the Port of Stockton did not feel that it had a moral obligation to protect the interests of these shippers, their interest would still be quite reasonably protected because they have only storage of commodities on the property of the port, and not permanent improvements, so that if some dispute regarding charges or service arose, they would simply store their commodities at some other location the following season, and that if worse came to worse, they could move their products to other terminals for shipment. It is a fact that certain commodities which are handled on the property of the Port of Stockton do move to other wharves for ocean shipment.

These various points which have been mentioned would seem to indicate that there is a certain balance in the relationship of industries and terminals wherein the interests, both of shipping and of industries, may be protected, and that probably for best results compromise between the extremes of operation as outlined will be found most advantageous. (Applause.)

PRESIDENT ABEL: May we have some comments from the floor on this interesting subject? If there are no comments, I would like to have Sergeant-at-Arms Colonel Bickford come up here. Colonel Bickford, have you anything to report? I suggest that you contact the various members and see that they become properly initiated in the ancient order of "behind the eight ball." The ceremony is usually performed in the Marine Room, and the Marine Room Committee should be on hand.

COLONEL BICKFORD (Bellingham): There is nothing to report as yet.

PRESIDENT ABEL: Is Mr. Kropff of the Pan-American Airways in the room? If he is not here yet, we will go on with the next paper.

I neglected to mention that Colonel Allin's paper was received a little late. The mimeographed copies have just been received and they are on the table. Anybody who wants one may help himself to the mimeographed copies.

Is Mr. Merrill here? Mr. Merrill, Mr. Kropff, who is going to talk on the Pan-American Airways, is not here yet. Would you mind giving your paper at this time?

We will now hear Paper No. 3, "Port Construction," by A. D. Merrill, Engineer, The Commission of Public Docks, Portland, Oregon. (Applause.)

MR. A. D. MERRILL (Portland): It is not my object to give an engineering or technical paper. I merely want to tell some of the harbor authorities what the engineer is up against once in a while.

Some Problems Confronting the Port Engineer

By A. D. Merrill, *Engineer*
The Commission of Public Docks
Portland, Oregon

In the beginning of waterborne commerce, natural harbors were used, and in a great many cases no docks were built. Lighters were used for transferring the cargo from shore to vessel where the waters were shallow, and docks were only built where the depth of the water made it possible. In the course of the transition from sail to steam it became necessary for the economical handling of freight to build wharves, or docks, that a steamer could lay alongside of and discharge her cargo, and it became necessary for the engineer to use his knowledge to meet the forward progress. Now we have still another problem, and that is the building of artificial harbors, which has been made necessary by the advent of motor trucks and improved roadways for the economical transportation of commodities raised within given areas, and their distribution to world markets.

In the building of these harbors, most of the work is carried on by the U. S. Engineers. However, the port engineer, when acting as a consultant for a community in the preliminary development of such a project, must consider and balance the savings to the farmer, the manufacturer and the consumer in the immediate area served, against the cost of the creation of such artificial harbors. After a harbor has been decided upon, then comes the problem of the location of a terminal, or dock, and the problem of this location needs considerable study, as the engineer must take into consideration all possible types of freight to be handled, whether by rail or motor truck, for long haul or local delivery. There are usually two types of terminals, one for the transshipment of freight and one to handle local freight. But in a great many cases in smaller ports it is necessary to combine the two features, and too much thought cannot be given to this problem.

At one time docks were built long and narrow, and steamers used to shift from one berth to the other for discharging and loading. Now it is more economical to build the dock wide, so that the vessel does not have to shift. She can place her inbound cargo on one side of the pier and take her outbound cargo from the other. All this has been made practicable by the advent of the four wheeler with tractor, and the lift truck.

It is the belief of the writer that the problems confronting the port engineer in dock construction are continually changing, and the problems of today and yesterday, while basically the same, are changing somewhat, due to the different methods of handling of freight, also the change in available materials.

One of the problems confronted by the engineer is the change in the method of receiving and shipping freight by land. In other words, it has been noticed that a change has developed in the receiving of freight from the railroad and the truck. Not many years ago 70-80 per cent of all freight received was handled by the railroad and about 20-30 per cent was handled by the truck. Now the railroad handles approximately one-half of the freight and the truck handles one-half of the freight. This means that accommodations for receiving and shipping of freight by truck must be increased, and nearly all truck lines will demand, if possible, tailgate delivery, which means that a certain amount of the rail accommodation must in some manner give way to the truck.

If tailgate delivery is not supplied for the truck, it is necessary for the truck to drive in the pier or warehouse itself, in order to discharge or receive its freight, thus causing congestion and an extreme amount of wear and tear upon the deck of the dock. The deck of the dock, however, is not the only place that extreme loads are encountered, for the reason that the trucks of today carry a load as high as 25 tons, and the greater proportion of this load is carried upon the rear axle, necessitating a stronger deck, heavier or closer spaced stringers, and a greater unit load on the caps and piling.

There is one other item that causes extreme wear and tear upon the deck of the dock, and that is the lift truck. We have in our district lift trucks which approximate 11,000 pounds; and with a full pay load of 6,000 pounds make a total of 17,000 pounds in all. When the lift truck is loaded, by actual scale test it was shown that 14,000 pounds of this load was carried by the front axle and only 3,000 pounds upon the dolly, or rear axle, which means that it is possible to have 7,000 pounds upon the deck between the stringers, and this load moving anywhere from 6 to 12 miles an hour has a tendency to crush the decking, and in some instances shear the planks. The engineer, in designing the docks of today, must consider these features, and of necessity build a slightly heavier dock. Some of the wear and tear on the decking, however, has been eliminated by using an asphalt top surface. This is very good when properly laid. Therefore, the engineer, in planning dock construction, must allow for the new methods of handling freight.

Under the present method of handling freight with lift boards, it is very easy for the wharfinger to pile excessive concentrated loading of the pier. While the dock is probably designed for a 600-pounds per-square-foot loading, this excessive concentrated load on the pier will often times crush the caps, a little at a time, and eventually that portion of the cap bearing upon the pile head will become spongy and the moisture in the atmosphere on the under side of the dock creeps in, and in a very short period of time will cause dry rot. It has been found by the writer that by laying a piece of tarred paper, either two or three ply, upon the head of the piling and under the cap, the paper will be pressed into the wood and keep the moisture out, and thus prevent a dry rot from starting, and gives at least one-third more life to the pile head and cap. This work applies mostly to untreated timbers. However, treated timbers have been observed to rot from the same causes.

Treated timbers used in the construction of docks call upon the engineer to balance the question of fire hazards against the more rapid deterioration of the untreated timber, and until some method of treatment is discovered that will more or less fireproof the timbers, the engineer will still have to use his own judgment, providing, of course, he is not limited too greatly in the amount of money he has to expend.

The engineer's problem in piling is greatly varied, according to the geographical location in which he is building. In the southern waters the principal destructive element is the teredo and the Limnoria. The teredo is very prevalent in all salt waters. The Limnoria are not very destructive north of Coos Bay, Oregon, although there are some found in Puget Sound and Willapa and Grays Harbors. These destructive marine animals are not present in fresh water, and therefore two very distinct classes of construction can or carried on—one for fresh water and one for salt water. In the southern parts of the Pacific it is almost compulsory to use concrete or metal piling, while in the northern part of the Pacific treated piles have proven quite satisfactory, and in the fresh water harbors untreated piling may be used, and receive satisfactory life. In all districts, dry rot is one of the things to be considered and guarded against, and this is only accomplished by extreme care in the selection of the timbers, proper drainage, keeping out unnecessary accumulation of rubbish and gathering between the rails and upon the timbers below which retains moisture, or using the more expensive method by treating the timbers against dry rot, of which there are several methods.

There is one other destructive element which has appeared in the Columbia River district in the last five years, and that is the termite. The termite is extremely destructive and dangerous because of the fact that he does not make his presence known until the timber is ready to collapse. Considerable study has been made by the writer of the habits of the termite, and it has been found that he very seldom makes his own hole to start work upon a piece of timber. In the Portland district there appears to be a small green beetle which bores a hole approximately the size and diameter of a BB shot, about three-quarters of an inch deep, in the timber in which the beetle's eggs are laid. The termite, when he takes wing, flies about, finds one of these beetle holes and crawls in, starting to work, and it has been found from this one hole (the only one that could be found on the outside of the timber) that the timber was completely channeled for as much as five or six feet with a colony of termites which would fill a one-pint measure. This particular timber was 40 feet above the deck of the dock and used as a cargo mast, and this timber was coated with creosote. The other method of operation of the termite is for them to go into the end grain of the timber, principally posts where they rest upon some other member, very seldom entering a post that has full bearing, which would show how important it is to cut a timber square and have a tight fit.

In recent years there have been some very disastrous fires, most of them starting on the under side of the pier, which is, from a fire-fighting angle, an extremely hard place to reach. As piers are generally one ship's length, or 500 feet long, it is a very easy matter for a fire to start and create a draft which would spread the fire the full length of the pier in a very short time, therefore showing the need of draft curtains being built to hold down spread of fires due to draft, and to maintain these draft curtains in good order, because

if they are not in good order they are useless. It also shows the necessity of installing a sprinkler system on the under side of the dock, which the writer believes is just as necessary, if not more so, than those installed under the roof. The writer believes it would be a good idea for the Chairman to set up a committee and to report to the Association on fire prevention even though the American Association of Port Authorities already have such a committee.

In some localities the engineer is hard pressed to maintain an adequate depth of water in the slips or on the pier heads. This is generally due to the fact that unnatural harbors are created for the economical handling of cargo or commodities raised in the immediate vicinity of the port, and when these harbors are created, the engineer as a rule is not given very much consideration as to its location, and he only hears from it after the harbor is built and the docks are constructed. After starting to use the piers for ocean commerce, they work fine for a year or two. Then the steamship companies see the trade changes, and deeper draft vessels desire to enter the port and occupy the docks. The engineer is then confronted with the fact that he has to do some dredging in order to accommodate the deeper draft vessels. When this happens, he wonders whether proper records have been kept of the driving of piling, so that he may know whether he has proper penetration, and whether it is possible to dredge for deeper water without injuring the safety of the cargo upon the dock. Some harbors, of course, do not have this problem to contend with, but there are a great many on the Pacific Coast which have. Therefore, the change in the design of vessels, the change of methods of handling of cargo, and the change of land transportation have caused a great many piers to become obsolete, and it has become much more difficult for the engineer to predict the future in this respect beyond a period of 10 years, and a dock must be built for at least 25 to 40 years of use in order for it to be economical.

Therefore, it is necessary for the engineer not only to guard against obsolescence, but he must also design in such a manner that repairs may be economically made and alterations effected to meet the change of times. (Applause.)

I would just like to say that I only wrote that to give you an idea that the engineer doesn't lay on the drawing board all the time.

PRESIDENT ABEL: It is very interesting to have a paper from you, Mr. Merrill, and we will give a little thought to the matter of having a committee on fire prevention.

Mr. Earle, have you a word in regard to this matter?

MR. E. C. EARLE (Los Angeles): I think the paper was ably prepared by Mr. Merrill. I have little to add except of a technical nature. We in Los Angeles have followed practically all of the methods Mr. Merrill has mentioned. We have done more work in some respects, especially in the prevention of dry rot. We treat all of our timbers after they have been cut at any point at all with a creosote preservative and then with asphalt on top of that to seal them, and in connection with piling, we use singe-top sheets to allow moisture over the pile; and the bolt holes are important items in preventing dry rot for timbers under docks. Each bolt hole is treated with a particular type of tool that injects the creosote preservative into the timber. I think Mr. Merrill has covered the subject pretty well on the matter of maintenance and some of the problems confronting the engineers of our ports.

MR. MERRILL: In turning the sheets while reading, Mr. President, I passed one sheet, and I would like to give it to you now.

In the Portland area in the last five years we have been confronted with the termite, which is a very destructive little bug. It looks something like an ant but is not harmless. The termites that we have watch do not breed in the ground; they will attack timbers anywhere in the air or any place else. In fact, we found one nest in [illegible] masts, which are sixteen by twenty timber, forty feet off the dock and only one hole in that timber, which was made by a green [illegible]. It makes a hole about as big as a BB shot in it, and that [illegible] down and we took enough termites out of it to fill a [illegible] they got there nobody knows, but they have done in the [illegible] of Public Docks property about forty to sixty thousand dollars' [illegible] of damage in the last year.

PRESIDENT ABEL: I don't like to see the [illegible] Commission suffer, but we would like to get rid of [illegible] of ours here; we have quite a few.

MR. MERRILL: I have found in my laboratory that termites have a flight of four times a year, and [illegible] treat timbers with a spray which we have developed [illegible] can hold them down by getting the flight. We [illegible] hive of these termites, and when they take wing [illegible] ready to go, then we start out and spray. That flight [illegible] uniform, regardless of whether it is in the docks or [illegible] in the timbers, because we have checked the wood. [illegible] the flight is uniform right through.

MR. JOSEPH MARIAS (San Francisco): You [illegible] you spray the pilings underneath the docks?

MR. MERRILL: They do not attack the [illegible] go into timbers almost entirely. I have never found any [illegible] piling so far. We spray on the contact points.

MR. MARIAS: You spoke of fire protection [illegible] while ago. Are you troubled with any fires under the [illegible] docks from volatile oils?

MR. MERRILL: If a fire starts from the under [illegible] of the dock it is one of the hardest fires to fight, because [illegible] a fire boat in certain areas is too high, and the water [illegible] shoot water under it.

MR. MARIAS: How are the fires usually started?

MR. MERRILL: They are usually set in our territory. We have a lot of firebugs moving around right [illegible]

MR. MARIAS: Do you have much trouble with volatile oils under your docks? Recently the Western Political Congress asked me to prepare a paper on the volatility of oils. There are a number of laboratories studying some chemical to reduce the volatility [illegible] reduce the hazards under the docks.

MR. MERRILL: Until somebody develops something to make creosote fireproof, you will have a bad fire. San Francisco had one, New York had a bad fire, and they spread very rapidly once they started. Unless there are proper fire curtains or draft curtains to stop them, [illegible] they will get out of hand. That is one reason I don't know whether you are situated the same as we are that you control the construction of private as well

ic docks. And in that way something should be set to get a more uniform code of construction.

PRESIDENT ABEL: Thank you, Mr. Merrill. Mr. Nicholson, have you a word on this matter of construction? We have only one paper in the whole program on construction.

MR. GEORGE E. NICHOLSON (Los Angeles): Mr. Chairman, I thought Mr. Merrill gave a very interesting talk. As to the matter of a sprinkling system under the piers, without a doubt a serious fire hazard exists on the water side of the piers, but there are some objections to the sprinkler system.

In the first place it is a very expensive installation, and secondly it is subject to damage and excessive maintenance costs. Personally I have always felt that fire hazards could be diminished very considerably by the spacing of fire curtains much closer together, and also the installation of wells in the deck itself, or the installation of fire doors where the fire could be reached from the deck structure. So I believe there is a possibility of diminishing the fire hazards without the installation of a sprinkler system. Thank you.

MR. E. C. EARLE: We did develop these wells in the deck and used them every fifteen feet on spacings along the deck so bulldog nozzles could go through them and turn water up, and we reduced curtain spacings from three hundred to two hundred feet.

MR. MERRILL: I would like to say this while we are getting all the discussion of fire hazards. What I have found is that by the time the fire department gets to the fire, it is generally too late to do very much good. We have to have something to act quick.

PRESIDENT ABEL: It has been our experience in Oakland, that the sprinkler system is the best watchman you can have because it is there all the time, and if the fire gets started that system immediately plays water on the fire and causes an alarm to be sounded for the fire department. We have had several instances on our Oakland piers where the sprinkler system has kept the fire under control until the fire department arrived.

CAPTAIN BRENNAN (San Diego): Did you ever take up of the cost of installation against the cost of insurance?

PRESIDENT ABEL: We just sprinkle the aprons, that are of timber construction; the other part is concrete. I would state that some of the old timber structures have not yet any sprinklers. It hardly pays to put sprinkler systems on them.

MR. EDWARD CARTER (Vancouver, B. C.): As to the cost of under-deck sprinkling—that is at least in the Columbia River district—the insurance companies will give you a sufficient reduction in your rates to overcome the admittedly heavy first cost of putting these sprinklers in. You have the assurance there of something to cope with your fire as soon as it starts, and they have assessed the value of it as such a great item that they will give very large reductions in insurance rates if you have under-deck sprinkling. It is so large that it will usually pay for that extra cost within an appreciable operation time.

PRESIDENT ABEL: Thank you, Mr. Carter. Those points are well to bring out in respect to proper fire protection and fire risks.

I think you will find our next speaker very interesting. His talk will not be in the form of a paper. It is an address by Mr. V. A. Kropff, Traffic Manager, Pacific Division, Pan-American Airways Company, who will speak to you on the subject, "Pan-American Airways." Mr. Kropff has brought along with him a number of maps which I think are now being distributed, he will make references to the map in his talk.

Mr. Kropff, you have the floor, and can take as much time as you like. (Applause.)

MR. V. A. KROPFF: Mr. Abel, and gentlemen of the Pacific Coast Association of Port Authorities:

I have had the privilege of sitting in with you for the last ten or twelve minutes, and you know I had begun to think that all of the problems were in aviation, naturally, but this has been very enlightening to me, and listening to your discussion I couldn't help but say to myself, "Thank God the termites haven't got into the Clippers yet." (Laughter.)

Pan-American Airways

By V. A. KROPFF, *Traffic Manager*
Pacific Division, Pan-American Airways

Aviation, gentlemen, as you know, is actually a subject which is on the front page of every newspaper in the world today. It is international aviation, and a very, very timely topic. Now, I'd like to have you, if you will please, think in terms of aviation. As I am talking to you, will you kindly lift your horizon with me and think internationally?

Pan-American Airways does not fly one single domestic air mile. We leave that all to our very good friends, the United Airlines, the T. W. A., American Airlines and the rest of the excellent carriers in the United States. We do not fly in the United States; we immediately fly internationally, leaving our terminals at New York, Baltimore, Miami, Florida, Brownsville, Los Angeles and San Francisco, flying to foreign lands. Every large country in the world has its air transportation system. The English have their Imperial Airways, which you gentlemen are no doubt familiar with. The French have their airlines; the Dutch, the K. L. M., and so on it goes to each country, and actually each land is trying to outdo the other. It is supremacy of the air that they are all striving for, and each one is doing its best to claim just that.

Now, we Americans ask ourselves, "Where do we fit into this international picture?" "I am told that the French, the English, and the Germans have theirs. Where does Uncle Sam fit into this scramble?" Gentlemen, the answer is the Pan-American Airways system—the largest in the world. We carry international air mail and express for Uncle Sam. Were my address to you this afternoon at four o'clock on Treasure Island, you would have, incidentally, heard, as one man ably put it, "the roar at four." In other words, you would have heard the

roar of trip number three hundred and twenty-one taking off from San Francisco Bay, bound for Honolulu, Midway, Wake, Guam, and then on to Hong Kong. Now, what does that mean?

It is more than trip number three hundred and twenty-one. Actually it amounts to this: it is twelve years of pioneering and research work that made that trip today at four o'clock possible. Now to give you a little bit of that background so that we can come up to date on it.

Twelve years ago the system was formed by our President, Mr. Trippe, Colonel Lindbergh, and our engineer, Mr. Priester, who conceived the idea of an air line for commercial purposes, bringing back markets to the United States which after the World War were lost to us, to regain for the United States foreign trade. It was to be not a pleasure-seeking airline, but actually an airline that would reach out and commercialize and help the business man of the United States to reach foreign markets sooner than his competitor was doing. The thought was to reach into Mexico, Central and South America and tap that market.

The first line was established some twelve years ago, flown by an American land plane, the Fokker F-7, a magnificent airplane—carrying seven or eight passengers, the last word of that day. It flew some ninety miles, from our original base at Key West to Havana. That was the first flight. From then on it went further into the West Indies and completely around South America.

Now, it has probably been some time since you men have had an opportunity to look at a map of that area. I brought these maps with me, and if you will kindly open them you will notice where Miami, Florida, is. Our base twelve years ago was Key West, as I mentioned before. It was moved to Miami, Florida. Now today, we can board numerous ships in Miami at the International Seaplane Terminal, which are going in numerous directions. We can take a domestic airliner from New York or San Francisco and in a few hours come to Miami and board a Pan-American Airways Clipper at, well, say seven-thirty in the morning, and fly through the West Indies, calling at Port-Au-Prince, and be in Haiti in four and one-half hours. Then on to the Dominican Republic, San Juan, and Puerto Rico that evening. In other words, starting in the morning, we can take off from Miami and be in San Juan that night. We have our choice from Puerto Rico either going through the West Indies, Martinique to the Port of Spain, Trinidad, or we can go straight and be in Trinidad at twelve-thirty, in time for lunch. And then proceeding south we can go along the coast of Brazil to Rio and work our way down to Buenos Aires, at which point we terminate and leave our flying boat equipment, taking a land plane to go across the Andes to Santiago, Chile. You can understand the comparison of this to other modes of transportation, and we are endeavoring to take passengers, mail and express into these various markets so the United States can enjoy the foreign trade. And after getting the order, it is shipped by surface transportation.

The flight from Buenos Aires over the Andes, commonly called "over the hump," is one of tremendous interest. Some of you men may have taken the flight. Some of us recall at school that they told us about "the mighty Andes," of their tremendous height, and so on. That is actually a fact, but flying the route, we fly through a pass which enables us never to reach an altitude of more than fourteen thousand five hundred feet. Now that might sound a little high to some of us, but actually it is not. Several weeks ago I had the opportunity to fly to New York with one of the domestic carriers. We flew at an altitude of sixteen point five, with no discomfort to any of the passengers. Oxygen was available to not only the crew, but for the passengers, should they want it. Next to each seat we have oxygen equipment on the trip from Santiago to Buenos Aires. Should any of you want it you can take it as you think you need it; it is simply a small tube, and you can inhale a little of it and it will revive you. Some of the boys flying the Navy tell us it is the greatest thing in the world on a Sunday morning. (Laughter.)

After our arrival in Santiago, Chile, we naturally proceed back up the West Coast of South America, and this we do with land planes. Although the route plainly indicates that it should be flown by a flying boat, it actually is not. It is flown along a plateau along the shoreline and parallel to the Andes and up into Peru to Lima. We land at Lima and then on to Panama, which is, as we all know, the crossroads of the world. Now, at Panama, we have a choice of going in several directions. We can go to Barranquilla, up the Magdalena River, or we can go back over to Trinidad or up into Jamaica, into Havana and Miami, or through Central America. You will be interested to note that in all of these flights when we go into all of these various countries, we stop and land in the capital cities of each one of them, so you, as a business man who would want to make contacts, would want to do so in the capital cities of these countries. From Barranquilla you can go to the capital of Colombia, and fly it in half a day. The trip down the Magdalena River depends on the condition of the mouth of the river whether you can get through, how long it will take, and that sort of thing. We then turn left and go up through Panama and up to Honduras into San Salvador and Guatemala City, and into Mexico, Brownsville and into the United States. Or we can go to Los Angeles, perhaps terminating there.

Now, just by way of comparison, have breakfast in Mexico City this morning around six and get to the airport at seven and we can be in the Hotel Oakland, let us say, for an eight o'clock dinner tonight. That will give you an idea, gentlemen, of the tremendous stretches of territory, and how actually international aviation has shrunk the world and made it smaller and smaller. That, gentlemen, will give you a little of the background and the development of the company through these years—through the West Indies and South America, which actually was the laboratory of the some five thousand personnel of the Airways and given the pilots, the men on the ground, the radio operators, the training that has made it possible to make these flights, and made possible flight number three hundred and twenty-one out of here today.

Now, we have also extensive territory in Alaska. From Fairbanks to Nome we have a comparison of time. With dog team between these points and returning—if everything goes all right— the trip can be made in about a month to five weeks. If you wish, you can leave Fairbanks Wednesday morning, have lunch in Nome, and be back in Fairbanks Wednesday night.

The same situation exists in China, but somewhat modified since August, two years ago. At that time we had an extensive line in China with our headquarters at Shanghai, flying from Hong Kong to Foochow to Tsintsien and also up to the great Wall of China, and up the Yangtze River to the border of Tibet. At the present time, some of those routes are being flown, and, in fact, our low factor there is running about one hundred per cent even in the face of obstacles as they now exist. There was an interesting comparison between the time from Chungking and Chengtu, which up to the time of the airline the only transportation facilities to be had at all were sedan chairs carrying you across the mountains, and you can well imagine that four or six coolies taking you in a sedan chair was a pretty ragged schedule. If you were fortunate and received some good strong ones, you could make it in from five to six weeks. Now, you can make it in three hours. That again bears out the shrinkage caused by commercial aviation and what it has done to the world today. That all gives you the entire perspective to build up to the actual trans-Pacific crossing.

Most of you have seen and lived in the area where these Clippers have flown and operated, and you know a great deal about it through reading. In 1934 the line was pioneered, and in the early part of 1935 the S. S. Northhaven was chartered, and the bases of Midway and Guam, and so on were colonized and the stepping stones of the Pacific were at that time built up. In 1935, the twenty-second of November, the first airmail left San Francisco Bay with the China Clipper, and history was made on that day. That was the start of flight number one, as designated by the Post Office Department, which keeps these trips in chronological order to bring us up to today's departure at four o'clock.

There is not much I can add to enlighten you on the North Pacific service. I am sure you gentlemen have read and heard and seen a great deal about it. Yesterday at four o'clock, you gentlemen probably also read, history again was made for this Pacific Coast when the California Clipper took off and landed in Honolulu this morning on its leg of the South Pacific survey flight. That route, I might add, is by way of Los Angeles. We have filed this application with the Civil Aeronautics Society, which is comparable to the Maritime Commission or the I. C. C. to the railroads. We are governed by the Civil Aeronautics Society, and we have filed with them the application for this route. It is now pending their discussion. The route is from San Francisco to Los Angeles' Terminal Island, and there taking on passengers, mail and express to Honolulu. The next day the flight will be made some nineteen hundred miles to Canton Island. Up to the present time, I should say, up to three or four months ago, Canton Island was uninhabited in the South Pacific, and is now jointly claimed by the United States and Great Britain and colonized by them. We have established a seaplane base there, with radio communications,

the same as on Wake Island, and everything is complete to the Clipper tomorrow afternoon in Canton after leaving this tomorrow morning. From there it will go over the International Date Line, over the Fiji Islands to the capital of New Caledonia. That constitutes an overnight stop. Provision will also be made for passengers there. From there on, eleven hundred and twenty miles to Auckland, at which point the Empire Airways, which are a wholly owned subsidiary, will connect from Sydney with us at Auckland. This airline, as I understand it, is jointly financed by the governments of New Zealand, Australia, and Great Britain. Their flights have been surveyed, and everything is pending on our arrival there, continuing across the Tasmain Sea, which enables you gentlemen to be in markets in Australia in five days, and from there to the Indies, and then to the East Indies, Singapore and so on in an additional day. This will point out to you the actual shrinkage of the globe today with the present facilities, that, gentlemen, covers everything to be said or, at the present, is to be said on the South Pacific route. The service for passengers, mail, and express will start, I don't know it depends on the authorities. We are ready. We are just waiting the signal to go ahead. On yesterday's flight there were some fifty company personnel and Army and Navy and Coast Guard observers and representatives of the Civil Aeronautics Authority. We are making their report. That will give you some kind of an idea of the background and organization behind each one of these flights as you see them and hear them leave this area. Each flight, gentlemen, is very closely guarded, for safety is paramount. Each individual flight has had a tremendous amount of thought and a tremendous amount of research. The ships come in here on Wednesday and are serviced completely and a week later they go into service and over the route. Before the flight the meterological data is assembled from the ships at sea and forecasts are received by us from China along the chain of the islands of the Philippines and Guam—all reporting to Alameda. The map is compiled every two hours; we know the air flow conditions and conditions all the way across that area. So you can see that ship takes off it is not just another departure. The layman sees it go, but he has no idea of the detail and thought behind each and every flight. I am sure you realize that this is going on, but it is actually impossible for you to visualize the extreme detail gone into.

I have gone over my time and, gentlemen, it has been a pleasure to be here. I am glad of the invitation, and I want to extend an invitation to you to visit the base, and we hope you will come over and we are going to try to show you some of what is going on behind the scenes. I think it will be tremendously interesting to you. Thank you very much. (Applause.)

PRESIDENT ABEL: I am certain the delegates here are very appreciative of your fine talk. It has been immensely interesting, and we will look forward to visiting the base over on Treasure Island on Saturday. Thank you very much.

Have the appointment of the Committee on Regulations which was submitted this morning. I am appointing Arthur Eldridge of Los Angeles, M. D. McCarl of Portland, Colonel Allin of Stockton, Captain Brennan of San Diego, Phil Carroll of Portland, and in an advisory capacity, Mr. West of the Northwest Terminal Operators. The committee may meet at such a time as it may see fit. I would like to state this—that although the program does not incorporate a notice that there would be a showing of the Port of Oakland moving picture, it will be shown to you on Friday in the South Room, which is right next to the Marine Room. I also wish to call your attention to the golf tournament tomorrow.

There has also been a request that many would like to see the actual terminals in operation. You will see our good film and it will give you a good idea. However, arrangements for a trip to the terminals will be made for all who care to go.

We are going to have some entertainment tonight. There is going to be a dinner dance, as you all know. The Marine Room will be open as stated in the program. Is there any further business to come before the Convention at this time? If not, a motion is in order to adjourn.

Upon motion duly made and seconded, the meeting was adjourned at 4:45 P. M.

THURSDAY, AUGUST 24, 1939

9:45 A. M.

The meeting was called to order by President Abel, acting as Chairman.

PRESIDENT ABEL: This morning we will be favored with a talk from Mr. Charles L. Wheeler, Executive Vice-President, McCormick Steamship Company, San Francisco, California. He was just talking to me about the age of speed we live in. He was out in his yard across the Bay this morning fixing up a badminton court when he noticed it was eight o'clock. At eight-thirty he left and was over here by nine. That's what bridges due for you. However, it is a pleasure indeed to introduce him to you. I shouldn't say "introduce," because you all know him—Charles L. Wheeler—who will address you on, "The Keel Is Laid."

MR. WHEELER (San Francisco): Mr. President and members of the Pacific Coast Association of Port Authorities:

Those of you who know me know that I can't be for anything or talk for anything unless I am rather enthusiastic, and I imagine you are wondering how I can be enthusiastic about an American Merchant Marine, considering some of the things that have happened to the Merchant Marine, particularly on the Pacific Coast, during the past few years. The casualties have been great, and those of us who are willing to labor on have continued perhaps because we loved the business and would rather be in the city and working in it and connected with the business that has access to the sea than being "hillbillies" or back in the Mojave area.

Before I touch on the question of our new American Merchant Marine, as a member of the Negotiating Committee for the waterfront employers of the Pacific Coast, I am going to ask this body seriously before they leave to consider some form of a resolution asking—well, I don't know whom, but whoever the powers that be, whether they be the longshoremen themselves or whether it is the President of the United States or Mr. Bridges or those who are going to decide whether or not we have a tieup within the next thirty or sixty days—ask them whether or not they won't consider one of three things:

The shipowners have offered to Labor—and as a member of the Negotiating Committee, I want to say to all of you honestly and truly that there isn't a single man in that group nor the group attending the meetings who has not wanted to avoid trouble and strife and who does not want us to continue the work regularly in all of the ports of the Pacific and they do offer to either: first, extend the present contract; or, secondly, to have collective bargaining; or, third, to arbitrate. Now, I don't know what more we could offer to the men, and I will say this: if there is anyone in this room who has a single suggestion that he would like to have handed to the Negotiating Committee, I would like to take it back.

Now that is the honest proposal that is being made, and I think this body ought to ask the powers that be to see that we do not have trouble this fall; and I think if we do not have trouble it will be because of the interest taken by organizations such as the Pacific Coast Association of Port Authorities, and I don't know any group that should be more interested than this particular group.

Now, as a shipowner, may I say before discussing the subject, that I honestly believe that if we could have the cooperation of Labor—I am not asking for a speed-up or anything of that sort, but cooperation of Labor, we could increase conservatively at least 50 per cent of the volume of freight that is moving over the Pacific Coast terminals today. It would not take long to sit down and go over with you gentlemen item by item the increases that we could have in the business going over our terminals, if we could gain the cooperation of Labor.

Some of us haven't given up, because we have faith in our country and its citizenship, and we believe we are going to go forward, we believe that we will again have conditions where we will be prosperous all along the Pacific Coast, as far as shipping is concerned.

The Keel Is Laid

By CHARLES L. WHEELER, *Executive Vice-President*
McCormack Steamship Company
San Francisco, California

When the Maritime Commission sat down at the piano, everybody laughed. They had no idea what a lusty tune it was going to play. To the satisfaction of many it has come forth with the "swing" version of the Anvil Chorus. And it is a mighty pleasing sound to those of us on the Pacific Coast.

There are some who do not like "swing," and look upon it as a fad; in fact, as a competitor with their own tried and true and time-defying waltzes. On the other hand, I analyze the present movement as one more evolutionary development in the glamorous history of the mercantile marine of the United States.

The eyes of our forefathers have seen the strength and power of merchant ships. Our eyes are to see the glory of the coming of a new power.

The keel of a new fleet and a new policy has been laid.

Briefly this morning I wish to trace the history which laid the foundation for today's evolutionary step, analyze and justify the symphonic parts of our orchestra, and then relate the whole to those Latin American rhythms which are dear to my own heart.

American merchant marine history is usually presented with strong patriotic fervor. Too often the economic cause, the strong commercial foundation, is buried under enthusiasm for ships as instruments of national policy.

Let's strip this sentiment from our brief. Why not establish dollars and cents line of reasoning.

First, the historical approach.

Many books on our maritime industries commence with such wor as those of Paul Zeis in his study of "American Shipping." Fish Shipping and Shipbuilding were important industries in the New England area even in colonial times. Lacking an abundance of fa farm land, the inhabitants turned naturally to the occupations f which the territory seemed most suited: construction of wood shi whaling, fishing and cargo carrying. By the end of the seventeen century more than a thousand vessels were registered as built New England.

Geographical circumstances in those days established shipping a shipbuilding as leading and prosperous industries. Yet, even und those conditions, subsidies were established. Registration and flag was limited in 1789 to American-built ships. This aided the shi builders. Shipping itself was assisted by means such as discriminato duties favoring goods carried under the American flag. Coastal trad was even then reserved in effect to domestic vessels.

Steady growth of American tonnage reached a climax in the clipper ship era of the Fifties. However, the relative importance in our e nomic structure of shipping and shipbuilding declined. Attenti and money and energy were being diverted to manufacturing an internal development.

The Civil War hastened a period of transition in our maritime a tivity. Steel ships replaced wooden ships. Our advantages over f eigners in vessel construction costs disappeared. Vessels were sold laid up in fear of destroyed in the war. And, after the war, atten continued to center on the domestic affairs of the nation. The com mercial stimulus for construction and use of American flag vess was almost dead.

Steam navigation had developed. As early as 1847 mail contract were awarded to us as means of Government support. But foreign-b ships dominated, until all subsidy legislation was under battle fire. High tariffs were established, lowering the volume of upward cargo available.

In 1858, American ships carried 74 per cent of American trade; 1910 it was only 9 per cent. And by that time 90 per cent of the entir merchant fleet was engaged in coastal trade.

Shipbuilders, shipowners and naval efforts to re-establish an ac tive maritime policy failed. The vital interests of the country were absorbed elsewhere.

There the country prospered. Industries developed. Our debt abroad were being paid off. Americans traveled abroad. A change was coming.

Again war hastened a period of transition. The World War estab lished the United States as the world's banker and warehouse of goods and services. We lacked merchant vessels. A Shipping Board and Emergency Fleet Corporation hurriedly undertook to provide over 3,000 vessels.

The War ended. The Emergency suddenly disappeared. The Gov ernment had a large surplus of ships. And from this point we com mence modern American shipping policy.

Whenever we pass beyond the point at which history sustains itself Perhaps because it is history and we can't do anything about it? Per haps because all of the confusion has cleared away, and the perspective is clear? And when is it necessary to emphasize to justify history? Let's try to keep the perspective as clear as we can until such time we are drawn into the turmoil of history in the making.

Perhaps there could be some controversy regarding the method of disposing of surplus tonnage after the War. However, we can agree that something had to be done. And the Merchant Marine Act of 1920 directed our policy toward sale of those ships to private interests. Li valides enabled ship operators to compete temporarily with the re turning tide of foreign competition.

Agitation for Government support did not succeed until interna tional depression beginning after 1926 accentuated the need. Sh earnings did not provide for replacement funds. The Jones-White Act of 1928 re-established ocean mail contracts. But steadily declining trade and earnings and increasing competition nullified the great in tentions of this legislation.

Renewed demands for a merchant fleet to aid commerce and na tional defense resulted in investigations. A new policy materialized defined in the Merchant Marine Act of 1936 and administered by an aggressive, realistic Maritime Commission.

Subsidies under the new policy are clearly defined as aid to de

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trade via radio, diplomancy, bank credits, merchant marine and other means. Until now our Government had been rather negligent and failed to do even those things that are considered fair and essential in foreign trade competition. Now they are stepping out and really trying to do something about it. It has been announced that Washington is budgeting the expenditure of some 130 million dollars for the development of inter-American agricultural, economic and maritime business. Agricultural attaches will be placed in certain key cities. South American countries will be surveyed as a potential market for American products.

Various groups in this country are actively promoting trade, such as the coffee interests, who are spending millions to increase the sale of their product.

Some time ago the government and private banks helped the International Telephone and Telegraph Company arrange loans amounting to $15,000,000 for expansion of their South American properties. The Export-Import Bank of the government took $10,000,000 of this issue. I. T. & T. has properties in Argentina, Brazil, Chile and Peru. Other corporations of this country have a billion and a half dollars invested in the continent.

Business Week Magazine reported: "More moves in the Latin American program of Washington come to light. The diplomatic posts in both Colombia and Venezuela are raised to the rank of an embassy, and ambassadors were appointed. The Inter-American Commercial Arbitration Commission submitted its newest and most complete report on efforts to standardize commercial practices among the Pan-American nations, and the Maritime Commission let it leak out that plans were already nearly completed for the building of three fast and luxurious ships for the South American service, vessels which can really compete with rivals from Europe in both speed and comfort."

Word was issued that the Government would endeavor to expand corporate export activities permitted under the Webb-Pomerene Act.

"Germany and Italy have made politics—political ideologies—practically their most important export to South America," according to Mr. Truitt of the United States Maritime Commission in a recent address. "Many of their other manufactured products," he said, "have been laid upon docks and overheads in those countries at a loss—just to get them in. That segment of their propaganda effort. The pecuniary loss incident thereto was, no doubt, charged off to advertising."

The competition for this trade in South America is fierce. According to Mr. Truitt the air has become one of the most important mediums. Airplanes and radio stations are promoting totalitarian doctrines and interests daily throughout South America.

The intensity of the activities are indicated by the flood of a small, cheap radio manufactured in Germany and which is capable of receiving only German broadcasts. In some cases these radios are distributed free.

The press some time ago carried reports that Germany intends to rebuild its "transocean" news service, and to open a wireless transmitting station in Buenos Aires and another in Lima. Germans apparently believe that politics and economics are so closely linked in some South American countries that to control one it is necessary to control the other.

This European influence is carried further in that the nationals of each country (Germans, Italians and so on) are brought closely under the systems of their respective countries. They live and work as rather closely knit groups.

Other means of approach used by foreign countries to gain an economic foothold in Latin America include the idea of an export subsidy. It was recently reported that Japan has created a very large subsidy of this nature to promote exports to South America. And we are aware from time to time of Japanese purchases of Brazilian cotton and coffee and Argentine meats, all designed to build up a reciprocal trade relationship. Moreover, I am sure you are familiar with the vigor with which Japan is developing her merchant marine.

One interesting feature of trading by Germany and Italy is the fact that, as you may know, German products are transported to South America in German ships and Italian products in Italian ships.

While our Government has not enforced this method, it has promoted its merchant marine. Three new ships are being built for Mississippi Shipping Company to run from New Orleans to the East Coast of South America. The Grace Line ships were removed from the intercoastal route and now serve the Caribbean area and North Coast of South America in conjunction with United Fruit Company services. The former Panama-Pacific intercoastal vessels have been rebuilt and are now running in the American Republic Line from the Atlantic Coast to the East Coast of South America.

Plans have materialized whereby the Pacific Argentine Line of our company will operate four new ships to be built on the Pacific Coast and placed in the route between the West Coast of United States to the East Coast of South America. The development of this line is a potent example of the way ships develop trade, trade develops ships. From Shipping Board days and total tonnage of 70,000 tons a year, the aggressive work of exporters, shippers, Chambers of Commerce, bankers, members of our Congress and our agents, port authorities and many others has built this up to 250,000 tons a year. We must particularly mention the growth also reflects the general promotional efforts of our Government representatives.

Past development and future possibilities warrant active participation of this route in the unfolding of the new American Merchant Marine.

Well, the orchestra is a long way from its finale, but I must make in short order. Rear Admiral Land, the able Chairman of the Maritime Commission, has just informed us that the Maritime Commission has already ordered for its own account or in association with private operators eighty vessels. Sixteen have been laid down. An average of one a week will continue to be launched under the program. Late this month, according to Chairman Land, America, the largest passenger liner ever built in an American yard, will leave the ways.

Yes, the keel is laid. We are proud to be a part of it all. program. And I think you port authority members feel the same because of your participation.

Mr. Joseph Mathes, President of the San Francisco Board of Commissioners, said in a brief presented to Congress recently: the port authority must operate the port facilities in the most economical and efficient manner; and secondly, must know the movement of practically every commodity from the time it is produced, whether on the farm or in the factories, or in whatever until it has reached the consumer."

There, again, is a clear expression of what I have termed integrated commercial activity.

There is a need for an adequate American Merchant Marine, a sound investment. As Rear Admiral Wiley, one of the Maritime Commissioners, recently explained, at no time since the fleet reached its peak in the fifties have American ships carried sufficiently substantial portion of American foreign trade to determine whether an adequate fleet can also be an economic success.

It has been said that if our merchant ships carried even 5 per cent of our foreign commerce the increase in annual would be some $78,000,000, of which $45,000,000 might go the subsidized vessels. Compare this figure with total operating subsidies today of some $15,000,000 a year.

Thus the appeal for American ships is not solely on the patriotism. It is a business proposition, an investment in a America. (Applause.)

PRESIDENT ABEL: Mr. Wheeler, we certainly indebted to you for coming over here and presenting fine paper. It is indeed very informative—a lot of for thought in it. Mr. Wheeler just informs me has an engagement in San Francisco which will take on his way, so again we thank you, Mr. Wheeler. plause.)

We are quite a way behind on our program. If are any short remarks that any of the members like to make, just make them as rapidly as possible there are no remarks, we will go to the next paper will now have Paper No. 6, which was scheduled ten-thirty, "Maritime Labor," by Mr. Frank Foisie ident of the Waterfront Employers Association, San cisco. We are very happy to have Mr. Foisie here. plause.)

MR. FRANK FOISIE (San Francisco): Mr. President and members of the Pacific Coast Association of Port Authorities:

I was very much intrigued by what your President had to say about "too many Bridges" in this town. I came to the conclusion that he and Uncle Sam are apparently in entire accord, because I believe we are partially indebted to Uncle Sam for at least two of the bridges, and apparently Uncle Sam is returning to that old saying about two being company and a third a crowd. So apparently we are in complete accord with the Pacific Coast Association of Port Authorities and with Uncle Sam in his efforts today.

I am really filling in for Mr. Roth, who, with his usual thoughtfulness, has anticipated that since you have decided to double-head this morning on the subject of Maritime Labor, it might be well if I came first, apparently on the reasoning that we have not entered into collusion on the program. Obviously, he is going to see to it we don't enter into collusion in our thinking. (Laughter.)

It seems to me that the subject of Maritime Labor relationships today on the Pacific Coast is one which you would long have had enough of. Nevertheless, since you have elected it, I will do my best to give a candid account.

Maritime Labor Relations Today on the Pacific Coast

By F. P. Foisie, President

Waterfront Employers Association of the Pacific Coast
San Francisco, California

We shall try to see the labor relationships through the strife.

Perspective offers an appropriate beginning. History says of the longshoreman in Ancient Athens — P. C.

"The urban democracy was supported by the shopkeepers, craftsmen, and workers. The keenest of them were the Peiraeus men, ship-builders and fitters, sailors and *dockmen*. Coming into contact with foreigners and being used to distant ventures, they had bold ideas in politics as in business, and were amateurs each for himself and all for the public good, which was their own. Rowdy and turbulent, they were always ready to rush to the Pnyx—political meeting. . . . In this way they could obtain from the system of government material profits and moral advantages. There were the presence tokens, the salaries, and the allowances, there were the shares of corn from the tree doles. . . ."

James Bryce in his "American Commonwealth" describes the longshoreman in San Francisco in the time of our fathers as "a dangerous element wherever one finds them," even as in Athens.

History is repeating itself today in Pacific Coast maritime labor relationships, though in the modern manner.

Where We Are

There is nothing to strike for. The essentials of peace and stability in our maritime labor are all present in abundance. The industry is entirely unionized. Collective bargaining exists in every branch in all ports. Agreements are standard in the thirty ports on the Pacific Coast and with all the crafts, on ship and on shore. The highest wages are paid, the shortest hours worked, and the best conditions obtain.

Yet trouble is incessant, with serious disturbance in contract negotiations annually. Job-action, quickies, and stoppage of work are perennial.

The Union policy is rooted in militancy, which, carried to its logical conclusion, means war. This is as true within industry as between nations; militancy serves no other end.

The opportunity of class conflict is spread with consummate skill. The big stick of "democratic" government, the instrument of persuasion a clamping by the heat-shield, and absolute control of every man who by the toss in power.

The leaders of our marine unions—with some notable exceptions—are exclusive to no authority, neither union contract nor personal conduct, neither government influence nor public opinion, certainly without sanction of national labor affiliations.

[illegible]

Progress is the law of life. Collective bargaining serves both to give labor its civil rights in industry and to bargain effectively in buying its product as labor. Labor can progress, however, only as industry and trade progress.

[illegible]

It is time we all recognized, to know beyond shadow of doubt that our maritime labor cannot perpetually take more and more in wages while steadily giving less and less in work. This simple fundamental, stated as it is in personal economic terms, appears hard [illegible] and labor, yet it is the lesson so graphically shown in the short span of the high carnival of Pacific Coast longshoremen [illegible] when, [illegible] Chronicle of New York attacked [illegible] Mr. [illegible]

[illegible]

By contrast, the foreword of the Steel Workers Organizing Committee in its handbook on "Production Problems" [illegible] [illegible] sets a high standard of enlightened self-interest on the [illegible]

> In order that all may enjoy more earnings, shorter hours and other benefits we must, by whatever means are necessary, produce more, not less. The American people possess unlimited natural resources. We have trained management and millions of wage earners able and willing to work. Under such circumstances greater production, guided by efficient management, means lower cost per unit. This enables our people to buy and use more goods. This, in turn, makes possible putting more unemployed back to work. With full or near full employment the bargaining power of labor is increased, resulting in higher wages. Higher wages coupled with lower prices mean a higher standard of living.

Contrast this with the experience in port after port with which the members of this Pacific Coast Association of Port Authorities are only too familiar on every one of our ports on all of our docks. Constantly or otherwise, the shutting and discharging of vessels during the past five years has been burdened with restrictive rules of the organization of obstruction practices which can end only in making further wage increases and additional improvements in working conditions an economic impossibility. Labor cannot have its cake and eat it too. It may elect either restrictive rules of wage increases and hour decreases. But the two are an economic contradiction—the one must, the other eventually is impossible.

Let us look at the record of economic wastage in Pacific Coast shipping.

The six hour straight-time day (not shift, mind you). The Union is now demanding that all work, whether continuing after three o'clock or beginning at that hour, shall take the overtime rate of pay. Such a restrictive work day in a 24-hour transportation industry is an anomaly, it is to be found nowhere in this country in any branch of transportation, nor in shipping anywhere in the world.

Freezing men to do but the one kind of work, on deck or ship, slinging up or working in the hold. Requiring that men be held standing idle by, under pay. Delimiting more and more what work a man does while on watch so that any other incidental work is declared to be

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overtime; which, in brief, is demanding that men be paid for work not done.

The refusal of the Union, contrary to the agreement, to permit normal progress badly needed in shipping for the introduction of cargo-handling equipment through job-action carried even to the point of preventing the use of such equipment already in the industry, of years' standing. The normal, progressive introduction of labor-saving machinery is essential to progress both for the industry and in the public benefit, and need not in any sense be at the cost of either, displacing men already in the industry nor in reducing their earnings. The Union charges large numbers of men displaced; the fact is that substantial numbers of men have been added to registration since 1934, and there is now a serious shortage. The Union alleges a loss in earnings; the fact is that earnings have increased substantially since 1934, several times what the wage increase accounts for. We are, again, confronted with the greatest of all scientific tragedies, as hypothesis slain by a fact.

Some of the Consequences

Costs are more than doubled. Wife benefits in New Zealand ports. No one. Some marginal rate cargoes fail to move, others are diverted. Buyers go to other markets. Pacific Coast industries threatened with seriously ill labor been fattened by such restrictive practices there would be, at least that much justification. But none here.

The abuse of overtime is history repeating itself. Wartime abuse in this field was largely responsible for the shipping strike in 1921. How can we avoid repeating such experience in the near future when overtime abuses are such that in a number of instances more overtime is paid than straight time.

The ceiling of possible benefits to the men has been reached through the Union policy and program of "restrictive rules" and the floor hit in wages done by the men.

Government in Labor

It is still true that that government is best which governs least.

Employers and Unions have hitherto shared the same philosophy of working out their collective salvation free of government intervention where practicable, minimizing it where it becomes necessary.

A new labor technique, however, appears to be upon us. By way of illustration: There is reason to believe that strategy by our Longshoremen's Union on this Coast is designed now to position the employers as locking out the Unions, whereas heretofore there has been a willingness to declare a strike and make no bones of it. The purpose is to place the men in position to benefit from unemployment reserves, which serves to protract the duration of any strike of the future.

The policy and practice of accomplishing labor's ends by job-action, beyond that which results from the collective bargain may well be leading us in this country into the Australian result, which is so illumination and pertinent in that country's dealing with waterside workers long defiant of the authority of the contract and of the law. That result is a legal straitjacket imposed on illegal strikes, as follows:

"Each state has its own industrial regulations which prescribe penalties for breaches of awards, but, dealing particularly with waterside workers, they are covered by a Federal Award made under the provisions of the Commonwealth Conciliation and Arbitration Act, the relevant parts of which are Sections 44, 45 and 46, which read as under—

"44.—(1). Where any organization or person bound by an order of award has committed any breach or non-observance of any term of the order or award a penalty not exceeding—

'(a). The maximum penalty fixed by the Court or a Conciliation Commissioner for any breach or non-observance of any term of the order or award, or

'(b) If no maximum penalty has been so fixed, the maximum penalty which the Court or a Conciliation Commissioner has power to fix therefor, may be imposed by the Court or by any District, County or Local Court or Court of summary jurisdiction which is constituted by a Judge or a Police Stipendiary or Special Magistrate or by an Industrial Magistrate appointed under any State Act who is also a Police Stipendiary or Special Magistrate.

'(2). Any such penalty may be sued for and recovered by—

'(a) The Registrar, or

'(aa) an Inspector appointed under this Act, or

'(b) any organization which is affected, or whose members or any of them are affected, by the breach or non-observance; or

'(c) any member of any organization who is affected by the breach or non-observance, or

'(d) any party to the award or order, or

'(e) any officer of any organization which is affected, or any of whose members are affected by the breach or non-observance, who is authorized under the rules of the organization to sue on behalf of the organization.

'45. Where any Court imposes a penalty in pursuance of the last preceding section, or in pursuance of section forty-nine of this Act, it may order that the penalty, or any part thereof, be paid into the Consolidated Revenue Fund, or to such organization or person as is specified in the order.

'46. Where a Court has imposed a penalty for an offence against this Act or the regulations thereunder or for a breach or non-observance of any term of any order or award, or has ordered the payment of any costs or expenses, a certificate under the hand of the Registrar specifying the amount payable and the organization and the person by and to whom respectively it is payable, may be filed in any District or State Court, having civil jurisdiction to the extent of that amount, and shall thereupon be enforceable in all respects as a final judgment of that Court.

We maybe irresistibly forced in this country by public demand into similar solution, unless employers and unions find a means in bargaining to avoid constant stoppages, periodically spaced with serious repeated strikes.

Both of us will cue that day, should it come.

It should never be forgotten that what the government can do it can also compel.

Some Conclusions

That marine labor contracts on the Pacific Coast are now on the comparable standard in related industries of with other maritime nations.

The coupling of responsibility with power is inevitable. The one grows with the other inexorably. The effort to seize the one and abjure the other is fatuous in labor relationships as in any other phase of human relations. And with great power goes grave responsibility for maintaining peace and stability of the labor relationships in shipping on this Coast.

The simple facts of labor life are learned at tremendous cost for education is more costly in practical life by far than in the classroom, and in labor relationships we seem to learn only through conflict and wastage.

You will wish to know, and it is due you that we state with candor our judgment of whether Pacific Coast shipping will visit upon Pacific Coast communities another disturbance than fall. The one true prophet in labor relationships is unmistakably the most hazardous of all occupations.

We cannot speak for labor.

But shipping wishes to make clear its position that we seek the peace at any cost short of surrendering the industry. The essential evidence is an effort to renew the contract for another year, even though shipping suffers seriously from failure by the Union to observe the contract and failure by the men to give a fair day's work. That contract offers the highest wages, shortest hours and best working conditions of any contract the world over in the shipping field.

The Union has rejected that offer.

The employers now offer an alternative, that of arbitrating the differences between us. Can we do more?

Shipping does not believe, therefore, that a strike is upon us.

If there is a strike, it will be because the leaders will have persuaded in their demands for more and more, while giving you and loss and thinking little of their cause and their case that they refuse to support it with the facts and reasons. They must further repudiate arbitration as an instrument of industrial peace. Under such circumstances economic force would hold full sway." (Applause.)

PRESIDENT ABEL: Mr. Foote, we certainly enjoyed your very informative paper. We appreciate it.

We will not have a discussion of the paper at present.

We will now have an address—

Collective Bargaining the Answer to Our Waterfront Problems?

By ALMON E. ROTH, President
San Francisco Employers Council

Chairman and Gentlemen -

I can put away your glasses for you have none of my manuscript before you. After finding that Mr. Ehrlich and I were born on the same day we both felt embarrassment because we draw our studies from the same experiences of the turbulent waterfront of the Pacific Coast. I don't want to repeat. However in view of the tremendous importance of this subject at the present moment all three of us will contribute what we know.

Mr. Foster has stated to you that the shipping interests will do anything that they can to break a strike on this coast and certainly the public interest requires that both parties—the longshoremen and the employers—do everything in their power, but there is a point beyond which no industries can go in seeking peace.

The shipowners have offered to renew the existing contracts with the longshoremen or arbitrate.

The longshoremen have asked for the following modifications in order to avoid a strike. Unless modifications are agreed upon by September 30th, the contracts will automatically terminate.

The longshoremen have asked that the straight time hourly rate be increased from 95 cents to $1.10, and that the overtime rate be increased from $1.40 to $1.65.

The shipowners have taken the position that the demands for increased wages on behalf of the longshoremen and other maritime labor cannot be granted for the following reasons:

The wages, hours and working conditions now enjoyed by maritime labor on the Pacific Coast are the highest and best in the world.

The following tables indicate that present maritime wages and hours and earnings of longshoremen are already too high when compared with other occupations which require much greater skill and many years of apprenticeship.

Longshoremen in San Francisco receive $1.16 per hour including overtime and overtime work, skilled and semi-skilled male employees in 26 manufacturing industries 79¢ per hour, unskilled male employees in 26 manufacturing industries, 58¢ per hour, skilled and semi-skilled male employees in the newspaper and magazine printing industry, 96¢ per hour.

The above-longshore figures are for the port of San Francisco, the manufacturing figures are from reports of the National Industrial Conference Board. The Newspaper and Magazine Printing industries are rated as being the generally highest paid group of manufacturing industries. The skilled and semi-skilled workers in this industry require an apprenticeship ranging from four to six years.

The following is a list of the weekly earnings for the first six months of 1939:

Longshoremen in San Francisco, $42.42 per week; skilled and semi-skilled male employees in 26 manufacturing industries, $29.72 per week; unskilled male employees in 26 manufacturing industries, $22.08 per week; skilled and semi-skilled male employees in the newspaper and magazine printing industry (highest rate), 41.48 per week; skilled and semi-skilled male employees in iron and steel industry **(heavy work)**, 28.56 per week; skilled and semi-skilled male employees in electrical manufacturing **(technical work)**, 32.96 per week; and skilled and semi-skilled male employees in the chemical industry **(health hazards involved)**, 21.76 per week.

The above earnings for longshoremen are the experience for the first six months of 1939 at the port of San Francisco. The manufacturing industries are taken from reports of the National Industrial Conference Board covering the same period.

According to a survey of approximately 42,000 college alumni made by the United States Office of Education, it was found that male graduates out of college eight years were receiving, in all occupations, an annual salary of $2,416.00.

The present demand of the longshoremen would yield an annual earnings of 5.9 per cent higher than this college group.

The average longshore weekly earnings for the first six months of 1939 showed an increase of 15.4 per cent over the year of 1938. Present weekly earnings extended for the year 1939 will show an average increase of actual earnings as compared with 1934, when the present rates were fixed, of $500.00.

The number of regularly employed longshoremen in the Port of San Francisco has increased from 1400 to 4700 since 1934. The fact that both the number of men and the average earnings have increased is a complete answer to the charge that men have been displaced by machinery and that their earnings have been spread thin by its introduction. It is also significant to note that longshoremen are not on relief.

If American shipping is to survive and if California products are to compete successfully in world markets, loading and transportation costs must be kept within reason. Reduced efficiency of labor has contributed even more to high costs than wage increases. A study by certified public accountants indicates the labor costs of loading a ton of cargo in San Francisco practically doubled between 1934 and 1938. Inexcusable as it may seem, such loading costs have increased 25.4 for the first six months of 1939 over the last year of 1938 due entirely to organized slow-down. These increased costs of handling are reflected directly in the delivered cost of California products from competitive markets. The double combination of increased wages and reduced output cannot possibly be carried by either the shipping industry or the producers of this State. The following is a concrete example of reduced output through slow-down. In 1934 a stabilized gang of longshoremen handled an average of 2,000 sacks of sugar per gang per hour. The average is less than 1000, and today the production has dropped to such a low point in some instances.

The following extract from the decision of Arbitrator Wayne L. Morse covering a typical case of slow-down in an plant:

"After a thorough study of the record in this case the arbitrator cannot escape the conclusion that one of the purposes of the union in objecting to direct transfers of cargo from truck to truck and vice versa is to create more work for longshoremen. Viewed from the selfish standpoint of the union such a purpose is entirely understandable. However, when viewed from the industrial position of an arbitrator, and of the public such a purpose is neither reasonable nor right. It necessarily involves an economic waste and tends to impose an unreasonable increase in cost upon the employers. When looked at from the standpoint of a long time labor policy it is unfair both to labor and to the public as well as to the employers. Unnecessary creation of work at the expense of employers is not contemplated by the agreement of October 1, 1934, and cannot be countenanced by any arbitrator who seeks to fulfill his obligations under that contract."

The following is a comparison of wages paid able bodied seamen under present Pacific Coast contracts with the highest wages of which I have record paid to other nations:

NATION	MONTHLY RATE	U. S. PER CENT HIGHER THAN
United States	$72.50	
Denmark	51.52	40.7%
Norway	50.92	42.4%
Holland	49.25	47.1%
Great Britain	48.25	50.3%
Belgium	35.25	105.5%
France	20.25	255.9%
Japan	11.63	523.4%

It thus appears that our able bodied seamen are now receiving 41 per cent higher wages than those paid to Denmark, the highest paid nation, and 524 per cent higher than those paid to Japan, one of our principal competitors.

The annual increases asked by the longshoremen would amount to $2,500,000 for the Pacific Coast and $1,500,000 for San Francisco. If the offshore personnel is granted a similar increase, the annual increase in offshore wages paid to American companies on the Pacific Coast would amount to $1,250,000. This means an increased cost to the Pacific Coast shippers of over $4,000,000.

It is obvious that an industry which was pronounced a sick industry in the recent memorial report of the Special Committee appointed by the Maritime Commission, is in no position to pay the increased wages.

The Longshore Union has so far declined to submit any evidence to support its demand for wage increases. The only reason advanced has been the increased cost of living and the fact that the Union wants an increase.

Living costs in San Francisco have increased only 3.5 per cent since signing of contract in 1934, and average annual factory wages during the same period have increased 27.3 per cent.

The present contract provides for a six hour day and overtime after the first six hours worked between 8:00 a.m. and 5:30 p.m. The longshoremen have asked that overtime be paid for all work per

formed before 8:00 a. m. and after 3:00 p. m. It is obvious that this request is merely a device for increasing the already high wages and has no relation whatever to the question of the reasonableness of working hours. It seems so unreasonable to require no further argument. The effect of this change would be to further increase the present exorbitant costs of handling a ton of freight.

The longshoremen's demand applied to the present earnings of $1.16 per hour, with the same ratio of straight time and overtime would predict an average hourly earning of $1.35 per hour.

At the present time the ratio of straight time to overtime is 1.872 or 53.5 hours straight time to 46.5 hours overtime for each 100 man-hours worked.

We have almost approached the point (earning of $1.175 per hour) when overtime will equal straight time—ratio 1 hour overtime to 1 hour straight time.

The longshoremen are asking for the present provisions for penalties on individual longshoremen for stoppages of work arising out of refusals to pass through picket lines, be eliminated. It is conceded that the shipowners, the longshoremen and the public have suffered terrific losses from "quickie" strikes and other stoppages of work. Confidence in San Francisco can never be restored and the good will of our trading area can never be re-established as long as these interruptions of commerce continue.

The agreements governing longshore work contain written commitments by all parties to refrain from job-action and "quickie" strikes. The local working rules adopted by Port Committees contain similar provisions. In addition from time to time, union officials have given further written assurances that contract violations and "quickies" would cease.

In June, 1935, District and Local officers at San Francisco pledged Coast Arbitrator M. C. Sloss that job-action would be discontinued.

In July, 1936, the Portland local similarly pledged the Federal Arbitrator.

In March, 1937, Mr. H. R. Bridges and the Coast Committee wrote the Waterfront Employers as follows:

> "The I. L. A. Pacific Coast District recognizes the fact that jurisdictional disputes between the various maritime unions and other disputes that are now occurring, involving issues beyond the terms of our contract, are working an unnecessary hardship on the employers through strikes, stoppages of work, etc.
>
> "The I. L. A. Pacific Coast District hereby assures the employers, parties to the 1936 agreement as amended, that such disputes as herein described will not be recognized or supported by the membership of the I. L. A. by indulging in illegal strikes or stoppages of work."

In January, 1938, the officials of the Seattle Local pledged that the agreement would be observed and that stoppages would cease.

When the contracts were renewed last year it was agreed by all the parties that it was essential that these "quickie" strikes be eliminated. As a means of ending "quickie" strikes it was agreed that the arbitrator should have the power to impose penalties upon individual longshoremen who violated the agreement by stoppages of work. In support of that provision, Mr. H. R. Bridges, District President, on September 16, 1938, sent to each local union a statement which was read to the members and later ratified by a vote of 14 to 1, as follows:

> "It was definitely felt by our negotiating committee that our organization has reached the stage where we are readily recognized as a responsible union. Stoppages of work that violate the agreement, over minor matters in many cases, jeopardize the welfare of our entire organization and the majority of its members and, in many cases, are definitely anti-union activities.
>
> "We are of the opinion that the majority of members will agree with our view on this matter and, if and when the present agreements are renewed with the basic features intact, it shall be the duty of the local and district organizations to see that the agreement is strictly observed and those individual members who persist in relying on direct action at all times avail themselves of the machinery established in the agreement to settle disputes or will risk being penalized in the manner described herein."

The necessity for penalties is indicated by the fact that the industry suffered from almost one thousand "quickie" strikes and job-actions from 1934 to 1938. Since the above commitment of September, 1938, was given there has been 98 additional "quickies" and job-actions. The reasons which impelled the unions to agree that members should be penalized for deliberate violations of the agreement are at compelling today as they were when Mr. Bridges endorsed them and the unions ratified them.

All these stoppages have occurred despite the fact that job-action is absolutely unnecessary and futile.

The agreement provides adequate machinery for settlement of disputes. Not a day's work would have been lost had the longshoremen resorted to this machinery. The unions have complained that there have been too many arbitrations, yet of the 24 arbitration awards handed down since October 1, 1938, 23 were precipitated by job-action and work stoppages, which left the employers no other course except arbitration. Out of eight arbitrations pending, seven were precipitated by job-action. Under these circumstances, both the shipowners and the public have a right to demand that the present penalties be retained as the only method of eliminating job-action.

In view of the recent repudiation by the Union of Arbitrator Stalmaster's award suspending 61 men for an illegal stoppage of work at San Pedro, it would appear that the Union should now be required to give some additional guarantee against stoppages of work rather than be excused from the penalties which were agreed to less than a year ago.

Now, imagine the weakness of that case. Heretofore, we have been told when these picket lines appeared that longshoremen wouldn't go through for two reasons—on account of danger, and because a union men they won't bust another union. They even had Chinese down there on the picket line; no union involved there was Chinese. Speaking as one who is no longer in charge of these negotiations, I can't see where they are going to get on that set of demands. They are so unreasonable. I don't see how the industry can grant them. They are going to have to go to arbitration; the sooner, the better. I think the public is going to demand it goes to arbitration. It is probably a good idea for the shipowners to sit down and attempt to negotiate this thing and settle it, but looking and listening to those chaps from the standpoint of their reasoning, I think they have been put in for the deliberate purpose of developing a militant situation, where people can be heroes for leading the men into battle. I hope that nobody pays the price here asked for peace. Nothing but chaos could result.

Now, we think here on the Pacific Coast that we have the worst situation in the world. It has been just as bad the world over, and the interesting thing is that the techniques that are used by employers and unions cause the troubles the world over.

The longshoremen are suggesting that the right of the employers to introduce labor-saving devices and machinery should be eliminated.

In many cases, cargo will not move by water unless the cost of handling can be kept down by labor-saving devices and machinery. Unless the savings thus made can be passed on to the shippers, business will be lost for both the shipowners and the longshoremen. Lumber, sulphur and scrap iron are examples. In any event, inasmuch as the men's actual earnings have increased and the number of men employed also have increased, it is apparent that the actual earnings of the men have not been curtailed through the introduction of labor-saving machinery.

The longshoremen have suggested that the termination date be changed to May 1st. The real purpose behind the suggestion for a change of the termination date of the contract is set forth in the following resolution which was adopted by the Maritime Federation at its Convention held in November, 1937:

> "WHEREAS, Our last strike which was called on October 29, 1936, required before its final settlement the membership of all Northwest locals to do their picket duty at the most unfavorable season of the year through rain, snow and freezing weather; and
>
> "WHEREAS, Our time of expiration of agreements has been previously set at October 1 to conform with the expiration of I. L. A. agreements on the East Coast, so that we might have simultaneous action by both the East and West Coasts; and
>
> "WHEREAS, The adverse weather on the East Coast may have a tendency to drive the membership of the East Coast into a hasty and inadequate settlement,
>
> "THEREFORE BE IT RESOLVED that this Third Annual Convention of the Maritime Federation of the Pacific Coast go on record to support a program calling for the expiration of all agreements between both the East and West Coast organizations and the shipowners and employers on April 30 of each year."

he reason for suggesting that the contract be extended to May
s so clearly set forth in the above resolution that no further com-
seems necessary.

want to make it plain that our trouble is not with many unions;
sist on the waterfront. I don't know the answer, but I know that
an forces are at work which are favorable. There is no question
what the public has wakened up to its interest in this thing. They
re that they are paying the bill.

here were some four thousand strikes last year, twenty-six thou-
days of lost work, a million dollars in lost wages and a million
irs spent for relief. It doesn't make sense. You find evidences of
w awakening. For the first time you are finding new legislation
Wisconsin, Pennsylvania, and Michigan, putting new responsi-
es on labor. These evidences of the new awakening are but straws
e wind but they indicate that the public is waking up.

ow there is another indication which is to my mind a very impor-
one. If we can get it into the heads of these longshoremen that
strikes hurt them, we have made a big start. Last year Mr.
e made a statement showing the exact stoppages of work we
had on the waterfront. We presented that to the Negotiating
mittee and they were impressed. For the first time they had a
rehensive picture. The longshoremen and members of the union
beginning to realize that these strikes are hurting the business
hurting them. Now behind these leaders are a lot of pretty decent
s, for the most part, that I think are getting into their heads
hese repeated interruptions are hurting them. If they do there
ne hope in the situation. One of these unions sent out a bulletin
members to the effect that if the fellows persisted in holding up
through drunkenness at shore they would be penalized by being
out of the union. I am sorry to say they haven't lived up to that
ion in recent months but it was a fine step on the part of
leaders.

re is another fact, and that is that the employers are organizing
al more effectively with this situation. Probably the waterfront
fine an organization for collective bargaining on the part of
yers as any in the country. We haven't given it up; we are
desperate now; but we believe that the fundamental interests
men and the public and the attitude of the employer, shippers
armers, who realize that these increased costs are taxed on to
costs will lead us eventually to the point where we can solve
mendous problem.

believe you are going to find an increasing organization of em-
s into effective units to deal more effectively in collective bar-
g. The shipowners and employers are willing to do everything
le to reach a settlement, short of surrendering the industry
t you. (Applause.)

RESIDENT ABEL: Mr. Roth, we are certainly in-
ed to you for this fine discussion. We thank you for
ng here and giving this discussion. We also wish to
Mr. Foisie again for coming here and discussing
matter of labor pertaining to the waterfront.

a motion duly made and seconded the meeting ad-
ed for luncheon with the Oakland Chamber of
merce. At the luncheon Colonel Arthur Fischer,
ity Commissioner, Philippine Exhibit, Golden Gate
rnational Exposition, gave an address on "America's
re in the Philippines."

America's Future in the Philippines

By Colonel Arthur Fischer, *Deputy Commissioner,*
Philippine Exhibit, Golden Gate International Exposition

wonder how many of you have really appreciated the fact that
re living on the shores of an ocean which is bordered by a
of festoons from Cape Horn at the tip end of South America
aska and the festoon of the Aleutian Islands joining Kam-
in Asia and from there down to Japan, the Philippines,
and the last festoon curving into the Indian Ocean, an area
greatest geologic activity in the world. Active volcanoes dot
he festoons in every political division thereof. Earthquake dis-
ces are of daily occurrence.

w and again economic and social problems loom up and develop friction along fault lines. Whose fault? Ours as human beings collectively. What has brought us to this state? "The sweet poison of self-satisfaction and of satisfaction with highly unsatisfactory facts." "We have been confusing rather than distinguishing the nature of things as they are and forgotten that the nature of life lies in the normal structure, environment and activities."

The economic problems of the Pacific region are the same basically as those in other parts of the world, they embrace agriculture, industry, commerce and finance of all the bordering countries, and for an understanding of these the fundamental physical and social factors, such as population, natural resources, social organization, health conditions, transport facilities, must be considered and they all affect the economics within a country and they in turn impinge on the economic problems of neighboring countries. Overproduction, underselling, tariffs, quotas, nationalisms rampant, hoping to maintain Society or better it and no compensating controls—the result, repercussions everywhere.

"The economic world is balanced between centripetal and centrifugal forces and they sway alternately to either side, and within the sway are cycles of unification or dissolution of synthesis and analysis." "The partition of the economic world is followed by the partition of the common mind." Today we see the truth of the above quotations, forces of a disintegrating nature at work disrupting the norm when the ebb and flow of trade was based upon a stable basis of money, faith in business and in labor.

> "Ideas lay snugly side by side,
> Facts with the greatest elbow room collide."

Economic conditions in the world are complicated, and in the Pacific area even more so, with its greater differences of cultures and peoples, but your trade with the Philippines is on a cash basis, with their pesos pegged to your dollar at the rate of 2 to 1. We do not loan them to buy from us; blocked credits are unknown. The population increases at the rate of 1.85 per cent per year, so in 60 years they will number 64,000,000, with the land to support them. That is why the trade of the future looms large, 50 per cent of their production going into export and 80 per cent of their exports go to the United States, for which the United States returned over $90,000,000 of manufactured goods. The Philippines buy each year wheat flour from the United States the equivalent of about 6,000,000 bushels, the product of 400,000 acres of your wheat farms. Cotton textiles, the product of 135,000 acres of Southern cotton fields, 100,000,000 pounds of raw milk, or the product of 25,000 cows, fresh fruits, canned fruits, fish and vegetables in quantities that the west coast farmers and fishermen would be surprised at if they looked at the figures. Overseas cargo means shipping and shipping needs harbors and ports. All trade to the Philippines up to 1820 was via Acapulco, Mexico, as the Islands came under the Vice Royalty of Mexico. The Spanish galleons were the only legitimate trade carriers in the 16th and 17th centuries across the Pacific Ocean. With the advent of steam, communications via Cape of Good Hope were established, then the Suez Canal opened up more trade. We in the Philippines realized that conditions as well as trade follow the laws of nature from the simple to the complex and back to the simple again but with higher specialization.

The Philippines are still primarily an agricultural country with about 54 per cent of the 114,000 square miles arable farming land, 18 per cent of which is cultivated and supports 16,000,000 people (data Census—April 30, 1939), 46 per cent of the total area is forest land. So one can see that the Filipinos out there are much closer to the soil than the Americans are, and withal are the most Americanized alien people in the world. They have spent over one billion pesos on health and education and material public improvements. They have 1,500,000 children in the public schools and 7,000 students in their own state university, with 100,000 pupils in public schools and 60,000 in private high schools and colleges. The Filipino is English speaking, the third largest English-speaking group in the world. The United States is first, the British Isles second, and the Philippines third; larger than Canada, Australia, New Zealand or South Africa in English-speaking inhabitants. They are a Christian people, 15,000,000 of them, the only Christian people as a group in Asia. They have 7,000 miles of improved highways in 49 provinces running into improved ports with large fleets of inter-island steamships.

In American trade they are the first overseas buyers of 105 of your products and your second largest customer for 55 other products and stand side by side with the Argentine Republic, seventh in the list of overseas customers. Boston concerns opened up branches in Manila

as far back as 1820, exporting Manila hemp and muscovado sugar. Hetty Green's husband started his fortune in Iloilo in the sugar trade in the 1860's. Spain did little in port improvements; ships lay off shore and cargo handled to lighters then to shore. When the Americans took over on August 15, 1898, with the capture of Manila, it took only 6 days to reorganize the customs, and on August 20, 1898, the Customs house was opened under military jurisdiction and trade began to function. In February and April respectively, 1899, Cebu and Iloilo were declared ports of entry, and by June, 1900, 70 interior ports were opened for all coastwise vessels, and the ports of Jolo, Zamboanga and Siasa were declared ports of entry. Under the Spanish regime a private company held an exclusive contract for handling all cargo on customs premises.

In 1905 the government took over this work under the Customs Arrastre Division, and in Governor Harrison's regime the largest and best freight and passenger pier in the Far East was built. Mr. Earle, who designed this pier, is present. The Manila Terminal Co. began to function, a private company for handling all import and export cargo operating under the Manila Harbor Board. After organization and proper shakedown in a few years, Lloyd's of London rated Manila as the premier port of the world for loading and discharging cargo.

Manila is now considering the dredging of the north harbor for freight vessels and inter-island shipping. The inter-island vessels dock in the Pasig River, while many of the overseas freight vessels, anchor within the breakwater and lighter their freight ashore. The plan is to facilitate the transfer of inter-island export cargo direct to freight overseas vessels by proper dock and new harbor facilities. Another plan is to have a restricted area as a free zone. Mr. Paul Whitham, who drew up the original plans, is present here. This has received impetus since the Japanese occupation of North China, and the restrictions placed on shipping and trade in Shanghai and Tientsin. Quite a few of the large import and export houses of Shanghai have moved their offices to Manila, indicating their hope and confidence in the port's future, as well as the growing importance of the Philippines in world trade, and as some of their No. 1 Taipans say, Manila is the logical cross-roads port and turning point for European shipping and for both coasts of the Americas.

The phenomenal rise in total trade of the Philippines is primarily due to the national roads system throughout the inhabited islands terminating in inter-island ports. This gave rise to the opening up of formerly inaccessible fertile public lands, and their being put into cultivation, led to an increase in production and modernizing inter-island shipping and a consequent increase in overseas tonnage. Due to lack of American bottoms several Filipino overseas shipping companies have been formed and new high seas vessels contracted for and gradually entering the field in competition with American and foreign vessels. Stimulated Nationalism and a desire for relative economic independence attribute as the urge in bringing about these conditions favorable to world trade.

We in the Philippines become keenly aware of upset labor conditions affecting shipping particularly. May I illustrate by again referring to the market for American flour developed in the Philippines? With your waterfront strikes, flour ran short, and not being able to import it from the United States, it turned to Australia, and they supplied us but the bakers and users had to get used to the new flour. Finally when American flour shipments were resumed a considerable percentage of bakers continued with Australian flour. Machinery, especially running wing tops, steel products, etc., were imported from England and the continent and millions were lost to the United States factory, manufacturers, and shipping companies in Philippine trade. An Australian exporter made the statement that Mr. Bevin's is worth a million pounds a day to Australia by being in San Francisco and diverting trade from us.

It is true that for one man making an extra 11 hours per day working the auto factories, the last 3,000 licensed cars in operation should interest labor and shipping, so should automobile gasoline and lubricating oil to supply these 3,000 vehicles.

The new wealth produced other than from agriculture is forest industries, both of which are constantly growing in front rushing. Gold spells everyone's emancipation, and it naturally would help the Philippines are mentioned, because the production for the first six months of this year was better than one million pesos per month; at this rate, the Philippines will top Alaska or California in production this year.

Few people realize that we have the greatest known iron deposits in Asia, with over 500,000,000 metric tons immediately available to steam-shoveled into chutes and into ships' hold, similar to the Mesabi range in Minnesota, that large high-grade chromium ore deposits are opened up and chrome ore being shipped to the United States; that manganese deposits are being developed and some oil being found, but not yet in large commercial quantities. Just let us imagine for a moment that this natural wealth of key raw materials for dealing with the gold for foreign credits and exchange, became the property of a war making nation and that this nation marshalled the manpower of Asia behind these resources. I'll leave it to your deductions as to what would happen to our trade, shipping ports, in fact our whole civilization which has advanced the world so that every working man today is living better than any monarch did 100 years ago. The Philippines, in my estimation, looms very large in integrating the equation of the future, and particularly great in our economic equation. Less than each year becoming more important to the future of the English speaking countries about the Pacific, the United States, Canada, New Zealand and Australia. My plea is to study your Pacific and remember these 16,000,000 Filipinos are Eastern in origin but Western in thought, action and desires, in culture one might say they are one of us, for us, and their economics are tied to us so far. I again plead that you study and thinking hard over the facts. Try and bring the Philippines into your picture of the spirited age as Stephen A. Douglas described it, he said: "I try to keep up with the spirit of the Age", to keep in view the history of the Country, to see what we have done, where we are going, and with what velocity we are moving in order to be prepared for those events which is in the power of man to thwart. (Applause.)

THURSDAY, AUGUST 24, 1939.
2:15 P. M.

The meeting was called to order by President Abel acting as Chairman.

PRESIDENT ABEL: Gentlemen, this morning we had some very fine discussions and papers on the matter of waterfront and Maritime Labor. We are now opening this subject for discussion, and Mr. McMillan, member of the Board of State Harbor Commissioners, San Francisco, expressed his willingness to present a discussion. Commissioner McMillan. (Applause.)

MR. McMILLAN (San Francisco): Mr. President and gentlemen:

As I have considered the matter since being asked by the President to discuss this momentous problem, I realize how apt that old axiom was that says something about "fools rush in" where angels fear to tread." I, of course, was interested in the discussion this morning by my two friends, Mr. Roth and Mr. Fouse, and of course listening to them, and were I to undertake to answer their statements, one who spent more than a third of a century representing labor, I would probably still be of the same opinion that you are now, that there are two sides to each question. I would agree with you to the extent that there's my side and the wrong side. That is the way I think I would expect they would agree with you and that is the way I would agree with you.

There are really three things that cause labor leaders to do what they do. One is that it is a popular thing to do; secondly, there is money in it for them to do, and third, because it is the right thing to do. Now I say to you with all sincerity, in the thirty-three years I have served organized labor, I have always tried to do what I thought was the right thing to do. It has been about three and a half years since I was transferred out of that department of labor.

The movement had to do with negotiations of wages and working conditions. It is much more pleasant work and you don't get so much kicks in the slats. When I was asked by our President to make some remarks on this subject I did agree to do so and I made some notes of some things that I would like to bring to your attention.

I perhaps am the youngest of the newest member of any present authority on the Pacific Coast. I assumed my duties with the San Francisco Harbor or the Board of Harbor Commissioners in May of this year. So it is probably a bad thing for me to be leading with my chin but I will undertake to lead only with my chin and not that of my fellow workers. I don't intend to try to answer either of the questions that talked this morning, since that is not my responsibility. Nevertheless due to my newness as a member of the Port Authorities I owe you delegates an apology for presuming to talk on the subject, "Collective Bargaining the Solution to Our Problems?" But there is any impartial observer will agree that since the passage of the Wagner Labor Act, the average business leader and many American labor leaders who have had to operate under the Act have known little or no understanding of what is involved in the collective bargaining process. They do not work with the skill of trained technicians.

The big task confronting American business and labor leaders is to change collective bargaining from the abstract legal concept into a means for industrial progress. If joint agreements are to prove successful, they must become as natural and as necessary in the plants as raw materials, machines, sales programs, and all other paraphernalia which form part and parcel of present-day business activity. Unless this can be done, collective bargaining will not pay its way in higher wages, increased dividends, and greater industrial peace, and those things are the true test of its worthwhileness.

Group negotiation requires its own technique just as do cost accounting systems, stock room methods, and foremanship training. It cannot take the form of the mailed fist or a large dose of castor oil.

Collective effort has not yet, and will not soon, become a universal panacea, for the reason that there are definite groups of workers who are not interested in this method of improving wages, hours and general working conditions. These are found in small, medium and large plants. They still feel that since they know the foreman, superintendent or manager they can just coast along and come out on top. Then, there are employers who, law or no law, insist on running individual contracts. Efficiency experts, industrial engineers and personnel managers' ideas are very likely to be thrown in the discard when the plant or industry is organized; therefore, these unanimously oppose collective bargaining.

Notwithstanding the legal right to organize and bargain collectively, genuine negotiations are often absent because of the attitude of power complex, of executives or labor leaders. One still holds to the old theory of "master and servant" while the other feels that through unionization he can force the employer to accept labor's demands. Human nature being what it is its transformation will not take place smoothly over night.

The split between A. F. of L. and the C. I. O. has disturbed the ranks of labor and executives generally. Decisions by Labor tribunals were in some instances forced the issue before either employer or employees knew what it was all about. For this condition the tribunals have, not been to blame. They have only taken the cases as they were presented. Congress gives the workers the right to organize and bargain collectively; but it does not endow them or their employers with negotiating experience. Workers and bosses must still learn the hard way. Executives and labor leaders, when new at the game, both get panicky when they are confronted with representatives for the other side of a labor dispute. They have mental pictures of dictographs, dictaphones and other contraptions to trick them to their disadvantage. In fact, one can hardly conceive of greater disillusionment. Yet there is nothing complex or mysterious. Nothing that a little patience, diplomacy, tact, and common sense cannot solve.

Collective bargaining is a sensible substitute for force. It exists, in fact, only when duly authorized representatives of both sides sit down across the conference table and make an honest effort to solve their mutual problems by discussion rather than by force. Back of all negotiations, however, is the potential exercise of economic strength by force, and if negotiations fail, force may, and often does, follow.

I do not want to bore you or assume the position of an expert, but I have spent more than thirty-three years in the labor field and could cite many examples of why certain negotiations succeeded or failed; also the resultant benefits to employers and workers from genuine collective bargaining; however, since those experiences are now water under the bridge, we will conclude with a few fundamentals.

Collective bargaining is essentially a matter of give and take. If one expects equity he must be willing to give equity. Stated differently, give the other fellow that to which he is entitled, take only that which is yours.

Negotiation demands a spirit of cooperative effort. The object is to find a solution to your problem and get issues settled. Intelligent negotiation requires information, so one should know the facts and substitute them for bluffing. If one goes to a conference for the purpose of showing someone up or anxious to knock a chip off the other fellow's shoulder, he may quite likely get kicked in the pants.

Recently a prominent professor gave several "Don'ts" which should be remembered by negotiators for both management and workers. These "Don'ts," while not all that one should know, are so apt that I take the liberty of passing them on to any of you who may have occasion to participate in labor negotiations:

"Don't expect to pick roses where you previously have sown ragweed. You're likely to get hay fever."

"Don't rely on lawyers to fight your battles. If you and your wife were trying to decide whether to see Sally Rand or go to grand opera you would not bring in a high-powered attorney to bolster up your choice, for you would know that his assistance would not be worth a damn."

"Don't oversell. True, a super-salesman can make a housewife buy a mop she does not want, but the next time she sees his coming she will lock the door."

"Don't lie. The fruits are temporary; the damage is permanent."

"Don't pull the trigger to see if the gun is loaded. It often is."

"Don't trade too many birds in the bush for birds in the hand. Birds in the bush can be caught."

"Don't forget to pick your receiver before you heave a touchdown pass."

"Don't be afraid to smile when the going gets tough. You'll be negotiating again next week."

"If you are a natural-born hitch-hiker, don't be surprised if the rest of the group also soon use their thumbs but in a different manner."

"Don't be afraid to lubricate the machinery a little when it squeaks, and always use a good quality of grease."

"Don't ever forget that the proper way to eradicate a bad practice is to substitute a good one for it. One of the most dangerous things you can do is to take a bad practice out of the picture and put nothing in its place. You will probably be getting something worse than what you took out. You have to have that very definitely in mind."

"Finally, don't regard negotiations as a chore, but rather as an opportunity to accomplish some worthwhile constructive purpose, both for yourself and the other fellow."

In joint negotiations, grievance machinery should be definite, simple and inexpensive, geared to give speedy justice. Delay in settling grievances is responsible for more dissatisfaction and discord among workers than any other one thing.

To those of you who are faced with the problems of labor disputes and rely on collective bargaining, I hardly need to say that it is a rough-and-ready way to settle differences. You know that as practiced in many places, it is not far above recognized standards of conduct as specified by Queensbury Rules, yet when compared with methods in use in parts of the old world today, it is not so bad after all. And it does have many good possibilities, not the least of which is genuine industrial cooperation, which is its ultimate and legitimate objective.

I thank you. (Applause.)

PRESIDENT ABEL: We certainly thank you for this fine presentation of the other side of the picture. Are there any further discussions on the papers rendered this morning? If not, we will go along with the program. The next is Paper No. 7, "Obligations of a Steamship Company in the Delivery of Cargo to Consignee," by Mr. H. C. Cantelow, Manager, Pacific Coastwise Conference, San Francisco, California. Mr. Cantelow. (Applause.)

MR. H. C. CANTELOW (San Francisco): The assignment of this subject was given in the form presented by your worthy President and Secretary, but I have found some difficulty in handling it within the narrow limits given. I shall therefore broaden the subject enough to include a discussion of the functions of the vessel as distinguished from the function of the ocean terminal. I shall also touch upon distinctly separate questions of carriers' liability and carriers' rates for transportation and carriers' charges for service rendered cargo in connection with transportation:

Obligation of a Steamship Company in the Delivery of Cargo to Consignee

By H. C. Cantelow, *Secretary Manager*
Pacific Coastwise Conference
San Francisco, California

The Function of the Vessel

The earliest function of the sailing vessel was to lift goods aboard from lighters at one place, float them to another place, and there lift them overboard to lighters or other small craft. The loading and discharging was performed at anchorages, the cargo being brought to or taken from ship's side by small craft at the risk and expense of the cargo owner. The ocean transportation rate was then earned and the carrier's obligation was terminated as soon as this primary transportation function had been completed at the port of discharge.

The small craft was sometimes owned by the cargo-owner but more often by firms or individuals engaged in the lighterage business and employed in that capacity by the various cargo owners. The ship's liability ended and the lighter's responsibility began when the goods had been removed from the cargo sling by the men employed by the operator of the lighter.

The authors of early bills of lading took it for granted that the only service for which the vessel's freight rate was to be paid was the primary service of floating goods from one harbor to another harbor and that the freight rate did not contemplate or include any services rendered before the cargo had reached the ship's tackle at port of loading or after it had been released from ship's tackle at port of discharge. This is indicated by the text of a bill of lading issued to my father in Boston when he was about to embark for California in 1849. That typical document of the times is interesting and instructive in more ways than one, and its brevity enables me to quote it in full, as follows:

"Shipped, in good order and condition by William Cantelow, on board the good Brig called the Rodolph—whereof H. Walker as Master for the present voyage, now lying in the Port of Boston, and bound for San Francisco. To say:

One Tierce
One hf Bbl
Two casks

being numbered and marked as in the margin, and are to be delivered in like good order and condition at the aforesaid Port of San Francisco (the danger of the seas only excepted) unto Wm Cantelow or to assigns, he or they paying Freight for the said Goods, at the rate of $2.50 per barrel with-primage and average accustomed.

"In Witness Whereof, the Master of said vessel hath affirmed to two Bills of Lading, all of this tenor and date; one of which being accomplished, the others to stand void.

"Dated at Boston, January 27, 1849.

"signed" Hartwell Walker"

That is all there is to it. This brief contract seems to have well served the simple needs of carrier and shipper alike until as recently as ninety years ago. I have no record of what it then cost the shipper to lighter goods to the Boston anchorage or from anchorage to shore on arrival in San Francisco Bay, but there is historical basis for the statement that San Francisco lighterage charges often exceeded the cost of freighting from Boston around Cape Horn to San Francisco.

As time progressed it became the universal practice to stipulate in bills of lading the precise point or time at which the carrier's liability for goods would commence and the point or time at which its responsibility would terminate. That was accomplished by the following typical clause:

"The carrier's responsibility, as a carrier, shall not attach until goods are actually loaded and shall terminate without notice as soon as the goods leave the vessel's tackles at destination or other place where the carrier is authorized to make delivery or end its responsibility."

As late as 1849 there was no demand for a definite bill-of-lading stipulation setting out that the agreed freight rate did or did not cover and include costs beyond ship's tackle, such as lighterage to and from vessel's anchorages. It would appear that all informed persons then knew that it was the function of the ship to float goods to the agreed port and the function of small craft to come alongside and float the goods to shore; that the two services were equally essential to the cargo owner and were separate and distinct services for which he should pay.

At a later date arguments arose which caused vessel owners to stipulate, in effect, that where the freighting contract said that goods were "to be delivered in the aforesaid Port of San Francisco" that did not mean delivery on shore or at any other point beyond the ship's tackle. Under some such circumstances the clarifying "ship's tackle" provisions to which I have referred found their way into bills of lading in all countries and in all trades.

It my understanding is correct, I am to present to you the steamship-owner's viewpoint as to whether, under present conditions, his obligation to the cargo owner ceases at the end of ship's tackle or ceases when the cargo is landed at place of rest on dock. Stated in that way the answer would have to be, "that would depend upon the lawful bill of lading and tariff provisions applicable in each specific case." For example, the carrier may enter into a freighting contract under which the shipper agrees to "deliver a quantity of sugar to vessel at ship's tackle and agrees that the consignee will take delivery at ship's tackle. In such circumstances the carrier would tender and complete delivery at ship's tackle, there earn its transportation rate, and there terminate its obligation and liability. The same may be said respecting a shipment of bulk copra or other bulk cargo discharged direct with ship's gear to a shipside hopper or conveyor. Likewise as to all cargo lowered directly to an open-top rail car with ship's gear.

An entirely different situation arises when it comes to dealing in a practical way with a great assortment of general merchandise to be discharged at a public utility terminal from many hatches and properly segregated and distributed for later expeditious and orderly delivery to numerous consignees and on-carriers to be transported to various final destinations. A practical plan could doubtless be worked out whereby the vessel, in such circumstances, would perform only the service of breaking the various shipments out of the holds and lowering them to the floor of the wharf, the terminal operator acting for the various consignees, picking the goods up there and handling them to piles for later delivery to consignees or on-carriers. That method would have to be authorized by suitable bill of lading and tariff clauses terminating carrier's obligation or liability at ship's tackle and establishing the status of the terminal operator as that of shipper's or consignee's agent. Delivery would then be complete and carrier's obligation would actually terminate at ship's tackle. As a matter of fact that is substantially the situation today at Havre and Antwerp and other world ports, but it is not the practice on this coast.

The Function of the Terminal

I would like to discuss the evolution from small sailing ships to large steamships and the evolution from lighters to costly public utility ocean terminals. This will serve to more clearly distinguish the function of the terminal from the function of the vessel and should assist in arriving at a better understanding of why enormous sums have been invested in terminals despite the relatively small investment in the superseded lighters.

It has been shown that in the pioneer days shipper's cost of intercoastal transportation was often less than the cost to him of lightering the same goods from anchorage to shore at San Francisco. It may be safely assumed that toward the close of the clipper-ship era, and for some time after the appearance of small ocean-going steam-driven vessels, the disproportionate high cost of lighterage had grown into a major shipper's problem at many world ports. Not only was the cargo owner's lighterage cost disproportionately high but the method was burdensome and generally unsatisfactory. His goods were subjected to additional handling and wasteful exposure to the elements. There was no proper opportunity for inspection and the many consignees were not permitted to remove their shipments at their reasonable convenience. As the size of communities and vessels increased the confusion, inconvenience and direct and indirect costs to shippers increased. There grew up a public demand for a greater degree of efficiency on shore and at less cost. The merchants in the communities saw that the answer to their local problems would be



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supplied if the community could provide adequate wharves on water deep enough to permit vessels to come to the shore to load and discharge.

It is too often thought that the deep-water terminal was devised to meet a fundamental need of the vessel owner. This reverse is not true. The vessel's primary need has always been a safe anchorage with sufficient water under her and room in which to swing with the tides. The merchants found that they had two primary needs: first, vessels to transport their goods to and from world ports; second, convenient shore-side sheds where their merchandise might be assembled leisurely and might be protected from the elements and thieves while awaiting arrival of the vessel for which intended; and where imports might be distributed in orderly piles for later removal at intervals convenient to the several consignees.

I do not wish to be understood, however, as holding that shipowners have not benefited by the evolution. Unquestionably the modern terminal better serves the purposes of both the shipowner and the cargo owner. Neither would wish to restore lighters to the ports from which they have disappeared. But I do wish to emphasize that the deep-water terminal was at the outset essentially a cargo-owner facility, as indicated by the fact that today cargo is lightered to and from anchorage at many ports around the world, and in tremendous total quantities. My point is that lighterage cost in such ports is borne by the cargo owner and the vessel's cargo handling expense and liability begins or ends at ship's tackle.

Carrier's Obligation to Deliver Cargo

The United States Supreme Court has often held that the carrier's undertaking is not only to transport but also to deliver cargo to consignees, because transportation is not completed until the shipment arrives at point of destination and is there delivered. But it would be improper to infer from this that delivery is part of the service which must be rendered for the transportation rate. Those Court decisions in no way suggest or support an inference that delivery must be effected by the carrier without any charge in addition to the transportation rate.

It is difficult for a layman with practical experience in the shipping business to understand how such distinctly different things as "ship's duty to deliver" and "ship's rates and charges for different services rendered cargo" could become confused in anyone's mind. Yet there is evidence of such confusion in the important decisions handed down by the United States Maritime Commission a few years ago in the so-called Los Angeles "A & D" case, Docket 10. It was an elementary principle that "the carrier's undertaking is not only to transport but also to deliver cargo." That duty would remain the same whether the basic rate for transporting were $10.00 or $100.00; whether it were agreed that the transportation rate would or would not include or cover services rendered cargo beyond ship's tackle; and whether the contract did or did not specify a separate additional charge for the handling services to be performed on the terminal beyond the reach of ship's tackle.

Mr. Chairman, I would like to interject that, as this paper was written a number of weeks ago, perhaps I may be considered presumptuous to hold up my judgment against that of the Maritime Commission. But I want to say that a few days ago there came to my attention a copy of docket No. 184, where they almost line for line repudiate the position in docket No. 10 and uphold the views I am advancing here.

The shipowner has freely admitted his obligation to make a delivery or proper tender of delivery, since that is the very essence of his contract of affreightment, but he should always defend his right to distinguish between the service rendered in floating goods from place to place and any other services he may render goods on lighters or on terminals before they are actually loaded aboard the vessel or after they have actually left the vessel. His right to make such distinctions seems to be recognized by our Shipping Act of 1916. There we find a distinction drawn between rates and charges. We find that not only must the carrier's rates be just and reasonable, but his charges, regulations and practices relating to "receiving . . . and delivering property for transportation, . . . and all other matters relating to or connected with the receiving, handling, transporting, storage or delivery of property," must be just and reasonable. In view of the language employed by the Congress, pertinent parts of which I have just quoted, it is difficult to understand how the administrative body could properly challenge the right of the carrier to establish a just and reasonable rate for transporting goods from ship's tackle at one port to ship's tackle at another port or the right to establish a separate just and reasonable charge for picking up the goods at the point at which they have been received on terminal "for transportation" and "handling" them thence to ship's tackle, or vice versa. The law, reasonably construed, recognizes that neither "storage" nor "handling" is "transportation."

There are several good reasons for such distinctions in the law and in actual practice. The controlling reason seems to be that the shipowner has no voice in shaping the policy of a given City, State, or Country respecting labor relations, working hours, policing and the like, and usually no ownership in or final control over the many marine terminals served by his vessels or the differing schedules of charges there assessed against his vessel and against cargo. The reverse is true when it comes to the transporting vehicle. The management of the ship is completely vested in her owner. Based on experience he can estimate her operating costs from voyage to voyage with reasonable accuracy, and he controls his basic freight rate-making policy. It is therefore only a part of good management for the shipowner to restrict the services to be performed at his expense, in return for payment of the freight rate, to those services performed aboard his ship, wherever competitive conditions enable him to do so. May I digress to say that unrestrained and often foolhardy competition between carriers has caused many departures from sound steamshipping practice and the strangest of these are to be found in trades where the controlling competition is with railroads.

I have failed to discover any basic reason why foreign offshore carriers failed to hold fast to the ship's tackle rate-making principle at all American ports. It was a fixed principle everywhere throughout the lighterage era, and "all is where lighterage has continued. It is a fixed principle today in most modern foreign ports around the world.

Perhaps when steamers, cargoes and terminals increased in size and the number of shipments per vessel grew proportionately making it a physical impossibility for each consignee to be at ship's tackle to there take delivery of his merchandise, package by package, as fast as discharged, shoregoers became confused about their obligations and rights. At any rate, it is certain that some time after deep-water terminals replaced lighters along the Pacific Coast, carriers in many trades drifted into the practice of absorbing the cost of handling goods from tackle to pile on terminal, though they made no corresponding change in their ship's tackle bill of lading provisions. All that was required to establish the ship's tackle principle in foreign offshore trades was a service, published tariffs filed, and freight tariffs drawn by which the carrier, as a matter of right, reserved the right to perform the further service of transporting goods from ship's tackle to pile on terminal, and the right to assess and collect for that service a charge in addition to vessel's transportation rate. As you will recall that was accomplished about three and a half years ago. Whether the carriers exceeded their lawful rights in thus breaking their total charges into two wings, one for transportation, the last service on the terminal, is yet to be determined by the Commission in proceedings now pending.

May I report again a comparison decision arriving at my desk and dealing with a docket number of which I do not recall? It has to do with handling charges assessed in foreign trades at all ports from San Diego to Vancouver, B. C. They sustained that position. I have maintained from the start, with reference to the right of the carriers to name his charges in two sums. They denied a whole epoch of shippers their claims of reparations where claims had been entered to recover the amounts of the forty-cent handling charge over a period of three and a half years; they were able to recover it under the statute of limitations. In other words, both were with respect to the intercoastal trade and foreign lines in all trades off shore the right of the carrier to name his transportation rate in a separate charge from ship's tackle to pile on dock was banned by the Maritime Commission in the last few weeks.

Let me say, in closing, that the carrier's obligation to make a delivery or proper tender of delivery has never been disputed by the carriers in any proceeding in which I have participated, and I repeat that that is the carrier's duty, whether or not a separate charge is for

vessel for the handling service performed on the terminal in making goods available for convenient and efficient delivery to consignee.

Thank you. (Applause.)

PRESIDENT ABEL: We certainly appreciate the expert handling you have given the subject. It is refreshing to have a man of Mr. Cantelow's experience discuss this subject.

We have a discussion of the Paper No. 7 which Mr. Cantelow just rendered, a discussion by Arthur Eldridge, General Manager, Port of Los Angeles, Los Angeles, California, Mr. Eldridge. (Applause.)

MR. ARTHUR ELDRIDGE (Los Angeles): President Abel, Mr. Cantelow, and gentlemen of the Convention:

I accepted the preparation of this paper with a little temerity when I realized the experience he had and the little I had. But I have tried to cover it from a little different viewpoint.

Obligation of a Steamship Company in the Delivery of Cargo to Consignee

Discussion by ARTHUR ELDRIDGE, *General Manager*
Los Angeles Harbor Department
Los Angeles, California

First, preliminary to discussion, permit me to compliment Mr. Cantelow on his presentation of a splendid paper ably prepared and factual to such a large degree as to leave but meager opportunity for disagreement or variance of opinion, except in the possible differentiating between legal or moral obligation of the carrier to quote an all-inclusive transportation rate or the carrier's right to levy segregated charges for (1) the normally required handling and assembling of cargo for convenient receipt or delivery between ship's tackle and point of rest on wharf, and another for the freighting of cargo from port of receipt to port of delivery.

The relationships, duties and obligations as between capital and labor, employer and employee, buyer and seller, supplier and user, and, yes, shipper and carrier, have advanced far and changed greatly in recent time, and it is, I believe, extremely impractical to attempt to define a carrier's obligation in delivery of cargo to consignee today based upon the interpretation and universally accepted obligation of a few short years ago.

When the terminal of today was unknown and lightering from ship to shore prevailed, it was hardly to be expected that the shipper or receiver could personally or by a normal representative deliver direct to ship or receive direct from ship, his cargo; nor could the steamship operator of those days be expected to maintain a lighterage service in each port of call, and it was essential that third parties participate in the transportation movement, and it naturally followed that the ship's obligation was assumed upon receipt at ship's tackle and its obligation terminated when discharged at ship's tackle, and as the carrier had no further interest in its delivery a separate charge was made by each party for his respective service.

However, with the advent of modern, up-to-date terminals, which, regardless of what originally motivated its development, is today of as great a benefit, convenience and practical necessity to the present-day ship operator as to the shipper, a changed picture presents itself. When the shipper delivers his cargo to the terminal of embarkation, he delivers it, in most instances, to the steamship operator or its agents and obtains receipt therefor, and its assemblage and efficient loading to the ship upon the ship's arrival should, from that time on, be an obligation of the carrier at carrier's expense for all cost of transporting and handling required to make convenient delivery to consignee at destination. The United States Supreme Court, as pointed out by Mr. Cantelow, has frequently held that the carrier's undertaking is not only to transport, but also to deliver cargo to consignee, as transportation is not completed until the shipment arrives at point of destination and is there delivered.

In establishing and publishing freight rates, it is common practice to quote different rates on the same commodity when shipped in (1) bulk, (2) crated, (3) in box, etc. Now if cargo subject to different modes of shipment receives different rates and the rate maker, in arriving at his rate, takes these various factors, including space required, convenience in handling, liability to damage, etc., into consideration, then it is logical that the same theory and principle should apply in establishing a rate that fully recognizes the transportation cost or a freight rate covering receipt from consignor to delivery to consignee whether made at ship's tackle, when that mode is practicable, or from point of rest on wharf, when that is the practical method.

It is likewise common practice for water or rail carriers to quote a through rate between foreign ports and our inland territory—all terminal charges, including car loading or unloading at point of transfer from water to rail, being absorbed by the carriers—and it seems just as logical to me to be the obligation of the water carrier to establish a tariff rate which includes handling and transportation from receiving point at terminal of embarkation to delivery point at terminal of destination, and the shipper has the right to assume that published rates for transportation cover this service.

The Legislative bodies of many states, and the Congress of the United States in the adoption of acts creating Commissions—such as Railway Commissions, The Interstate Commerce Commission, The Maritime Commission, etc.—to regulate within their prescribed jurisdictions the operations of public carriers, impose upon the carrier the obligation in publishing its tariff to establish reasonable and uniform rates and insure the observance thereof by prohibiting in their application discrimination and rebates.

This theory certainly implies the obligation of the carrier transporting cargo under the same type of bill of lading to include in its published rate the same inclusive service at each of its respective ports of call where terminal facilities are at all comparable. Certainly in all fairness the carrier's obligation could not be deemed to cease at ship's tackle at Port "A" and at tailgate of consignee's truck at Port "B," yet this has been assumed by carriers in the past to be their vested right, resulting in much confusion in the minds of the shipper and what appears to many Port Authorities as unjustified discrimination as between ports. I can conceive of no better method of correcting this evil and eliminating the shipper's confusion than to recognize the carrier's obligation as commencing with *convenient* delivery to it at shipping terminal and ceasing only with *convenient* delivery at destination terminal for the published tariff rate.

Were it feasible and practical in the handling of the majority tonnage of general cargo movement—considered either from the standpoint of carrier or shipper, or jointly—to efficiently and economically accept or make delivery at ship's tackle, other than through a third party arrangement, I might reconcile myself to subscribe to the ship tackle theory, but visualizing the resultant confusion—lost time and motion—inconveniences—delays in sailing—traffic and terminal congestion, and the hundred and one hindrances and drawbacks from such attempted acceptances or deliveries in mass movement with the multiplicity of various cargoes and shippers, it is inconceivable that any carrier operator would consider, without a third party arrangement, such operation, and if a plan is not feasible or workable what justification is there for attempting to recognize it and insisting on establishing rates on such basis? The mere fact that recognized ports still exist where deep sea terminals are not available and old methods of loading and discharging must be employed and rates are therefore based on delivery and receipt at ship's tackle, does not warrant employing similar basis of rate making between ports with modern terminals when the antiquated methods cannot efficiently function.

I have no knowledge as to the component factors considered by the water carrier in establishing current water rates, or as to the adequacy thereof, but the more thought I give the question the more convinced I become as to the carrier's duty to consider transportation as defined by the Supreme Court as completed only upon delivery, and to accept the obligation of establishing one tariff rate to cover. (Applause.)

PRESIDENT ABEL: Thank you very much, Mr. Eldridge, for this fine discussion you have given to Mr. Cantelow's paper. Are there any further remarks on the subject from the floor? I note we have with us this

afternoon Colonel John C. Lee, United States Army, Division Engineer for the Pacific Northwest. Colonel Lee, will you take a bow?

Colonel Lee rose and was applauded by the Convention.

The next paper on our program is Paper No. 8, "Uniform Cost Accounting for Ports and Marine Terminals," by Dr. Ford K. Edwards, Transportation Economist, California Railroad Commission. Dr. Edwards is very well qualified to discuss this subject, and we are happy to have him with us. Dr. Edwards, will you kindly come forward? (Applause.)

DR. EDWARDS (San Francisco): When your Chairman speaks of being well qualified it reminds me of a definition of an expert, a man who had come from a long distance—the longer the distance he had come the better the expert he was.

I can't quite qualify as being fully expert on this problem, first, because I haven't been steeped in it like you gentlemen, and secondly, I have only come from San Francisco, but I shall endeavor to do the best I can.

I might say in introduction that I think that the programming of my paper to follow Mr. Cantelow's and Mr. Eldridge's remarks was very fitting. It reminds me of the problem I faced three or four years ago with the Commission when we were making marine studies of problems in the Bay Area and the matter boiled down to who should pay for what, and what the vessels and shippers should pay. After talking with the vessel operators we gathered that the vessel's responsibilities ended two miles off shore, and after talking with the owners we gathered the impression that the responsibilities ended about two miles up town.

Uniform Cost Accounting for Ports and Marine Terminals

By Dr. Ford K. Edwards, *Transportation Economist*
California Railroad Commission
San Francisco, California

Before launching into my topic I wish to express my appreciation for the courtesy which the Pacific Coast Association of Port Authorities has accorded me by inviting me to speak before this Convention. I sincerely appreciate the honor.

I should also state that inasmuch as this subject is not only one that is somewhat technical and involved, but also one that is obviously not going to be decided at this meeting, I shall limit this paper to the more obvious highlights of the subject. In any event, the uniform classification of accounts and cost finding formula attached hereto are sufficiently self-explanatory to permit of subsequent digesting.

Why Uniform Cost Accounting?

Any discussion devoted to the subject of uniform port accounting must necessarily first satisfy the pertinent question—"Why Is Uniform Cost Accounting Desirable?" The topic has no significance until one has satisfactorily answered this question. Then, and only then, is it permissible to turn to the "How" of Uniform Cost Accounting.

A primary function and purpose of all disbursement accounting has been that of providing the management of an enterprise with the necessary financial control over the expenditures and the budgeting of funds. This applies equally to ports and terminals as well as to any other types of business. The general observation may be made that after reviewing the classification of operating expense accounts currently maintained by several of the principal ports on the Pacific Coast, it appears that the current accounting practices of most port bodies satisfactorily meets this test.

A second function of disbursement accounting, and one heretofore of minor significance, is to permit of the determination of the cost incurred in the rendering of the respective services furnished the vessels and the cargo. The importance of this function depends, of course, upon the degree to which one recognizes cost as a factor in rate making.

In principle, at least, three primary factors govern port rate making: (1) the cost of providing the service, both as to individual services and in total; (2) the ability of the user to pay; and (3) competition with other ports or terminals.

Under highly competitive conditions Items No. 3 and No. 2, in order, are probably the guiding factors, with costs, particularly as costs for individual services, being given little weight. However, when competition has run its course and been brought within some restraining bounds the inevitable tendency is for rate bodies to seek the stable standards or guideposts to rate making. Historically it was at this stage that the cost of providing the respective services became of interest or concern. There are indications in the port and marine terminal field that this stage is being approached. This does not mean, of course, that costs will or should become the sole factor in rate making without regard to the other factors. It does recognize, however, that a knowledge of one's costs permits of a more intelligent and rational approach to the subject of rate making than is otherwise possible.

The discussion herein deals with the subject of uniform cost accounting solely from the standpoint of making such costs uniformly available for rate-making purposes. Most port accounting systems today probably meet all other managerial needs for budget control, especially as comparisons between ports, are not here a factor.

The Accounting Problems Are of a Minor Nature

Consider now the accounting problems involved in cost finding for rate-making purposes.

Two problems arise. The first concerns itself with the sufficiency of the accounting detail to reflect the cost for each service rendered. The second involves the problems of making such costs comparable with those of other terminals. While this latter feature is not an absolute necessity, without it the usefulness of the data in the development of uniform port charges is sharply limited.

Neither of these problems, however, is of any great concern, for it is probable that the accounting data now maintained by most of the ports or terminals is of sufficient detail to permit of the desired cost finding. It is immaterial whether such detail appears in the published annual reports or remains in the underlying accounting papers so long as it can be made available to the analyst without undue time and expense.

The point should be made at this time, however, that any accumulation of the costs by primary accounts or sub-accounts should be orderly and consistent and obviously self-explanatory. The writer has found it necessary on occasion to practically audit terminal accounts to satisfy himself as to what they contained. This should not be necessary.

The Principal Problem—Each Port Speaks a Different Language in Assessing Charges

The fundamental problem and chief stumbling block in uniform port cost finding does not rest so much upon the "why" or "how" of cost finding but as to the nature of the services which costs shall be found. All ports and terminals do not speak the same language when it comes to assessing port charges. In the first place, a given service at one port does not bear the same tariff designation as it does at another port. What one port terms as a toll another terms as wharfage, and what one terms as wharf demurrage another may term as shipside storage, or may even eliminate in greater or lesser degree through an extended free-time period.

Even more serious, however, is the fact that the expenses which a port expects to recover in the form of dockage charges or tolls and other port recovers through the assessment of pier rentals or service charges. One port places the burden of its support principally against the vessel, another against the cargo. Hence, cost comparisons be-

tween ports can have no valid meaning unless and until a standard nomenclature covering "services for sale" is agreed upon or at least fairly understood. The problem does not arise where a terminal is interested in cost finding in terms of its own tariff services, but it is extremely pertinent where comparisons with neighboring ports or terminals are desired.

Procedure Followed on Railroad Commission Study of 1936.

The extensive marine terminal study made by the Railroad Commission of California in 1936 ran squarely into this problem. One of the issues at stake was the reasonableness of the tariff charges of the private terminals for dockage, tolls, wharf demurrage, service charges (i. e., clerking the cargo), car loading, etc. Cost studies were started, but these soon reached a blank wall until a uniform definition of terms was established. It was obviously impossible to arrive at the cost of dockage until one had determined what the concept of dockage embraced in terms of square feet of pier. Furthermore, the definition had to be sufficiently specific to permit its being expressed in actual square feet of dock space upon any type of wharf structure encountered. The cost of "pier" was also meaningless until one sharply defined what the term embraced and converted it into square feet of wharf structure, sheds, roadways, etc. The result was that the cost study was held up until, as explained in the Commission's final report, dated May 16, 1936, a decision was reached as to the precise meaning and interpretation of each tariff item. This in turn required, of course, that the obligations of the vessel versus those of the cargo be defined. The conclusions reached in this regard were arrived at after a study of port tariff provisions, steamship tariffs and bills of lading, decisions of the United States Shipping Board Bureau, local port practices, etc.

The costs assignable against the vessel were reduced wholly to dockage charges and service charges (*i. e.*, clerking the cargo where the vessel does not maintain its own terminal organization), plus occasional miscellaneous items such as handling lines, rental of office space, etc. The costs assignable against the cargo were reduced solely to tolls (except, of course, for such accessorial services as wharf demurrage, car loading, weighing, etc. Subsequently the total costs for each service were further reduced to an appropriate unit basis, such as the cost per ton, the cost per berth occupancy, etc. When this had been accomplished the costs as between ports were finally reduced to a comparable basis.

Costs May Be Computed on One Basis and Converted to Another Basis for Rate-Making Purposes.

The above treatment does not mean, of course, that the tariff charges must necessarily be based upon the same units as those in which the costs were originally computed. Such may not be possible, for several reasons. For example, the Railroad Commission study found that the total *cost* of providing dockage facilities at certain private East Bay terminals in Oakland and Alameda exceeded the *tariff charges* for dockage at the competitive port of San Francisco. The reason was that at the East Bay terminals all charges against the vessel for the use of the wharf were grouped under the single item of dockage, while at San Francisco such charges were broken down into two parts, namely, dockage and pier rentals. In the case of San Francisco, the term dockage obviously had a much more restricted meaning from the standpoint of cost finding.

As it was not found desirable, for competitive reasons, to increase the East Bay dockage rates above those for San Francisco, the dockage rates were established at approximately the level of those of the latter. The annual deficiency in revenues that would result therefrom was computed and reduced to a per-ton basis (tons loaded and discharged) and added to the vessel service charges (*i. e.*, clerking costs). The *total* resulting charges assignable to the vessels were not changed because of this treatment.

It is apparent that the analyst who tries to make cost comparisons between different ports without going back to a standard and uniform definition of terms will find himself inevitably faced with the troublesome, though by no means insuperable, problem here illustrated. In approaching such problems the analyst must obviously have a clear concept of the specific items of port expense which any given tariff item should reasonably be expected to cover.

Proposed Classification of Accounts.

In order to illustrate the amount of accounting breakdown which is desirable for cost-accounting purposes there has been set up herewith a suggested classification of accounts. It should be reiterated, however, that it is a matter of indifference whether the detail shown herein is accumulated by primary accounts, by sub-accounts, or left in the form of a subsidiary record in the supporting ledger. The important thing is that it be available or be capable of determination by the analyst upon occasional study. The apportioning of depreciation, taxes, or insurance by individual structures would fall in this last category. The following list assumes, for purposes of illustration, a port properties with two wharf units:

I suggest two wharf units because in my hypothetical classification of accounts I have used only subtype and subtwo. If a port as of individual structures be indicated in the following paragraphs, one could use numbers, or rather sub numbers running down to ten or and number desired. I don't think it necessary for me to read these, this covers all phases of port operations, and I would say in this connection, in the preparation of this paper I contacted most of the port authorities on the Pacific Coast and asked them to forward me their classification of accounts, and I find most of the ladies keep a breakdown in as great a detail as shown here except possibly on the general and administrative accounts. In some cases they keep even a greater breakdown than is here indicated.

I — Maintenance of Waterways and Structures

101 — Superintendence
102 — Engineering
103 — Dredging
104 — Maintenance Wharves and Substructures (by structures)
104-1 Unit No. 1
104-2 Unit No. 2
105 — Depreciation Wharves and Substructures (by structures)
105-1 Unit No. 1
105-2 Unit No. 2
106 — Maintenance Transit Sheds (by structures)
106-1 Unit No. 1
106-2 Unit No. 2
107 — Depreciation Transit Sheds (by structures)
107-1 Unit No. 1
107-2 Unit No. 2
108 — Maintenance Trackage Facilities
(other than those embraced in the wharf structures)
109 — Depreciation Trackage Facilities
(other than those embraced in the wharf structures)
110 — Maintenance Roadways and Trucking Areas
(other than those embraced in the wharf structures)
111 — Depreciation Roadways and Trucking Areas
(other than those embraced in the wharf structures)
112 — Insurance on Structures
112-1 Unit No. 1
112-2 Unit No. 2
113 — Maintenance of Fire Equipment (Mobile Equipment)
114 — Depreciation of Fire Equipment (Mobile Equipment)
115 — Stationery and Printing
116 — Taxes, Property
116-1 Taxes on Structures and Facilities
116-2 Taxes on Land
117 — Rentals Paid
117-1 Rentals on Structures and Facilities
117-2 Rentals on Land

II — Dock Operation

151 — Superintendence
(Clerking)
152 — Checking Cargo
152-1 Checking cargo to or from vessel
152-2 Checking cargo to or from shipper (or consignee)
152-3 Checking cargo to or from Demurrage
152-4 Checking cargo Account Car Loading
152-5 Checking cargo Account Car Unloading
152-6 Checking cargo, Other
153 — Making out Ship's Papers
(Dock Labor)
171 — Assembling cargo for vessel's account
172 — Car Loading
173 — Car Unloading
174 — Handling and High Piling Account Demurrage
175 — Handling Lines
176 — Weighing
177 — Stencilling
178 — Re-coopering
179 — Miscellaneous labor (for which cost plus charge assessed)

(Miscellaneous Dock Expenses)

181 — Cleaning sheds and docks
182 — Watchmen
183 — Power for dock use
184 — Power for sale
185 — Water for dock use
186 — Water for sale
187 — Claims
188 — Car Demurrage
189 — Absorptions
190 — Insurance, cargo
191 — Insurance, compensation
192 — Telephone
193 — Stationery and Printing
194 — Taxes, Payroll

(Dock Equipment)

201 — Car loading equipment (supplies, repairs, depr.)
202 — Weighing equipment (supplies, repairs, depr.)
203 — High piling equipment (supplies, repairs, depr.)
204 — Tractors and Trailers (supplies, repairs, depr.)

III — Other Port Operations (Non-Terminal Operations)

Warehousing — Producing Power Sold
Grain Elevators — Stevedoring
Terminal Railroad Operations — Other Operations

IV — Traffic Expenses

301 — Superintendence
302 — Solicitation
303 — Rate Adjustments and Tariff Publication
304 — Dues and Subscriptions
305 — Stationery and Printing
306 — Other Traffic Expenses

V — General and Administrative

351 — Salaries and Expenses — General Officers
352 — Salaries and Expenses — General Office Clerks
353 — Accounting and Billing
354 — General Office Supplies and Expenses
355 — Legal Expenses
356 — Pensions and Relief
357 — Insurance, General
358 — Stationery and Printing
359 — Taxes, Office-Payroll
360 — Office Equipment (supplies, repairs, depr.)

In addition to the above, certain other basic data would be necessary, as follows:

1. Valuation of each substructure
2. Valuation of each superstructure, *viz.* sheds
3. Valuation of the land
4. Working capital normally maintained to meet day-to-day current obligations
5. Valuation of dock equipment (tractors, etc.)

Certain statistical data are needed depending on how far one carries the study. They include the following:

1. Dock office areas and rental areas (square feet)
2. Tonnage at each pier unit:
   a. Loaded or discharged by pipe line
   b. Bulk cargo loaded direct to or from rail cars
   c. General cargo loaded direct to or from rail cars
   d. General cargo moving through transit sheds
3. Total tonnage received on wharf demurrage
4. Total ton-months of storage
5. Tons on wharf demurrage receiving high piling
6. Tons handled in car loading
7. Tons handled in car unloading
8. Tons weighed
9. Hours consumed in scalculling, recoopering, handling lines

A fundamental prerequisite of cost accounting is that the costs, and particularly labor costs, be directly accumulated as far as possible rather than derived through arbitrary apportionments. A too generous use of the latter may readily distort the accuracy of the study. It might be noted that there exists a "happy medium" in the accumulation of the above data. A too detailed publication of expenses and statistics which are but seldom used constitutes an unnecessary burden and expense. On the other hand an undue sparsity of data requires the analyst to practically audit the accounts to derive the needed costs. Both are equally undesirable. Where a port or terminal does not provide the full cargo clerking services or accessorial services shown, the needed accounting data are accordingly reduced.

From a review of the current accounting practices of most of the ports and terminals it appears that very few changes in accounting practices would be required for cost study purposes. In fact, it is probable that a reasonably accurate cost study as outlined in the formula to follow could be made for most of the ports on the basis of present accounting practices. The data not currently available can be developed from the underlying documents or by test studies.

A Port Cost Finding Formula for Rate Making Purposes

A cost finding formula is, generally its own best description, at least it tells the story better than mere words can ever do. Furthermore, one cannot develop the desired accounting data without first running through a formula to see what breakdown of the costs and statistics one will need. For these reasons it was felt desirable that the subject be carried through to its conclusion by developing the accompanying formula and incorporating it as a part of this paper.

It is patterned after that developed by the Railroad Commission of California in Case No. 4090—re Investigation of Marine Terminals in the San Francisco Bay Area. During the course of this latter study a series of principles were developed (as noted hereinabove) for the division of terminal costs between the vessel and the cargo, and the principles then established have been carried forward into the accompanying formula. While the subject of apportionments is too voluminous for presentation here, many of the basic principles and findings have been more or less sketchily referred to in the footnotes to the respective schedules of the formula. For those desiring to pursue this phase of the subject cross-references have been provided to the pertinent sections of the Commission's study.(1)

It should be noted that whereas the available copies of this report are now limited, copies are undoubtedly in the files of all members of this Association. Incidentally, the thought might here be advanced that the matter of the division of port or marine terminal costs between the vessel and the cargo is a subject worthy of future papers by this Association.

During the Commission's investigation a formula, similar in principle to that accompanying this paper, was applied to four private terminals on San Francisco Bay. A most time-consuming phase of this application was the necessity for the analyst to become familiar with four different sets of accounts to the end that the resulting unit cost figures could be kept on a comparable basis. Any standardization in this direction is highly desirable. Aside from this feature, all it takes to make an application of the accompanying formula is a generous supply of large, well-ruled paper, a half dozen pencils and a good pencil sharpener.

The accompanying formula is in a streamlined form for guidance purposes and would have to be expanded in the case of a port operating more than two wharf units or offering services different from those enumerated. As it is largely self-explanatory no further explanation need be made concerning it at this point.

In closing I express the hope that this paper may have served to throw some added light upon the subject of uniform cost accounting.

In the light of the Shipping Board's decision that Mr. Canelo must quoted—I haven't read it—it might conceivably be that we would have to shift our emphasis on the cost for the Commission purposes; the charges laid against the vessel, the expenses laid against the vessel covered all properties necessary to the docking of the vessel up to and including the point of rest, which on general cargo included the charge against the vessel for the use of the shed in reaching the point of rest within the shed. In other words, a portion of the road or aisle ways within the structure, such charges being pro-rated on the square-foot basis, on the cost of maintaining such structure. In the case of most industries the Commission has prescribed a uniform classification of accounts and of course has prescribed what should go into those accounts so when we make a cost study on any utility or transportation agency, where such accounting classification has been prescribed, we know in advance what to expect to find in each account. In the case of the marine terminals, of course, there is no uniform classification, and I have endeavored to set up what might be the cost analyst's dream of what he would like to find if he were making a cost study of all the ports.

I might say that the public port bodies I have found, keep a much greater detail in their accounting set-up than have the private ter-

(1) See Final Report of the Transportation Department, Engineering Division (by Edwards and Hoffenberg), dated May 19, 1916, Case No. 4090 — Marine Terminal Investigation.

minals whose costs today the Commission had to work with in the studies of three or four years ago.

I see, Mr. Chairman, that you have anticipated my thought there in the subject matter of that paper—the division of the charges or where the responsibility begins and ends. I might add, however, a decision in one's mind as to where a ship's tackle or points of rest is, where the dividing line should be, as to what should be charged against the cargo, and what should be laid against the vessel. (Applause.)

PRESIDENT ABEL: Thank you very much, Dr. Edwards, for your splendid presentation and analysis of this subject. It is a very important one for all terminal operators. I feel that Dr. Edwards has given a great deal of time and thought to this paper, and I hope you all will study it and profit therefrom.

We have a second paper on this subject, a discussion of Dr. Edwards' paper by Mr. H. D. Fadden, Traffic Analyst of the Port of Seattle, Seattle, Washington. Mr. Chapman has consented to present Mr. Fadden's discussion. Mr. Chapman. (Applause.)

MR. H. P. CHAPMAN (Seattle): President and gentlemen:

I have a great deal of respect for Mr. Fadden. You who know him will know he is very technical and he goes to some length to explain some particular point to a problem. My respect for Harry has increased greatly because I noticed he uses some phrases here that Dr. Edwards used.

Uniform Cost Accounting for Ports and Marine Terminals

Discussion by H. D. FADDEN, *Traffic Analyst*
Port of Seattle
Seattle, Washington

Dr. Edwards, in his paper, "Uniform Cost Accounting as Related to Ports," has outlined a method, proposed a classification of accounts, capable of infinite expansion in all directions and has worked out a formula for the determination of port or marine terminal costs for rate-making purposes. In the report and recommendation to the California Railroad Commission in C. R. C.-4090, he has shown the results of the practical application of such system to cost accounting at private terminals at the Bay Ports. In all this he has done a tremendous amount of research work and study of marine terminal cost and rate problems. He has shown us the way. It remains to be seen what, if anything, we are going to do about this very essential phase of marine terminal operation.

I believe all of us on the west coast feel, with considerable pride, that we have been leaders in marine terminal operating methods. We are, however, woefully deficient in our methods of cost finding and cost accounting for rate-making purposes. Anyone who has had to work out rates for terminal services, that might have to stand up under investigation by competent examiners, will appreciate the advantages of a system of cost accounting that includes all expenditures properly allocated. Anyone who has listened to discussions of rates by terminal operators is aware of the diverse opinions as to what expenses are included in any particular service and can appreciate the advantages of comparing costs based on some uniform method of allocation.

For those who have given little thought to the subject, or are dubious as to the necessity, or who feel that the game is not worth the candle, I can do no better than quote from the report of the Federal Trade Commission on this subject made in 1916: "The purpose of conducting a business is to make money, and the only way to make money is to sell something for more than it costs. The first essential, then, is to know the cost. It is the belief of the Commission that the small margin of profit existing in so many of our industries is due to the ignorance on the part of the manufacturers of what their goods actually cost to produce. This ignorance causes them to make unprofitable prices, which the manufacturer who does know has cost as forced to meet to a large extent.

"In the minds of business men who have not installed cost systems there are a number of objections to taking the matter up. One of these is the feeling that exists in the minds of so many that their business is unique and different from any other and that no system could be devised which would give them true costs. It is unquestionably true that some lines of manufacture lend themselves more readily to the installation of a cost system than others, but it is also true that no line of manufacture is so complicated that a system cannot be devised which will give reasonably accurate results.

"The most common objection is that of the cost of installation and expense of operation. Many manufacturers are of the opinion that a cost system means an interminable amount of detail and red tape, and the assistance of a number of extra clerks. It is true, in many cases, that some extra labor may be required, but not to the extent that the manufacturer fears.

"Other business men are of the opinion that they do not need a cost system because they know what their goods cost. They may, and a number of them do, have an approximate idea of what their goods cost, but in a large number of instances this supposed knowledge is based on foremen's guesses. Guesswork is unsafe and poor business practice.

"The Commission is urging manufacturers to determine their costs accurately in the interest of better trade conditions. It believes that anything that is of benefit to an industry is of benefit to the public, and it is also of the opinion that the nearer cost systems approach uniformity the more valuable will be the results."

What applies to manufacturers dealing in tangible commodities applies with equal if not greater force to the terminal industry dealing in intangible services, and before any great advance is made toward uniform cost accounting and uniform classification, allocation and nomenclature of port terms a great deal of prejudice must be overcome.

Dr. Edwards' classification of accounts and formula are made to cover operating conditions at the Bay Ports. Whether or not they can be applied by simply altering terms to fit conditions on Puget Sound and Columbia River only careful study and application will determine. From such casual study as I have been able to give the system and from his report to the California Railroad Commission I find that he is aware of practically all of the problems with which we have to contend in our study of costs for rate making.

After all the cost of constructing a pier or warehouse of similar type in California is comparable with the costs of construction in Washington or Oregon. You pay about the same scale of wages for the different classes of labor in the Bay region that we do in the North. You depreciate your properties at about the same rate, your insurance runs the same range of rates, and so far as I have ever been able to ascertain the total cost of moving goods across one of your piers or handling goods in and out of a warehouse, together with storage and other expenses incident to terminal service is about the same at any port on the Pacific Coast. It is, then, not so much a matter of radically changing methods of operation in an impractical manner as it is to adopt a uniform system of classification and allocation so that the elements of any combination of labor or expense which constitutes a service, regardless of what that service is called, will be known. Because of the different methods of operation and the different ways the charges are split between parties, the classification of direct labor would necessarily require great detail. Other expense, as Dr. Edwards points out, could be classified and allocated without material changes in the present accounting systems.

Let me cite an example to illustrate my point. In San Francisco the "Tolls," or "Tolls-Wharfage," is defined as "the charge for cargo conveyed on, over or through any state structure—the charge, with exceptions, is 15 cents per ton. In Seattle, wharfage is defined as the "charge that is assessed on all freight passing or conveyed over, onto or under wharves, etc.," and the charge on general cargo, with exceptions, is 50 cents per ton. The definitions for the services are practically the same, yet it is manifest that the Seattle wharfage includes services not included in San Francisco's Tolls-Wharfage.

Both "Tolls" and "Wharfage" are evidently charges for the use of wharf facilities, but without a breakdown of the elements included in such use how are we to understand each other when we use the terms? We simply talk unintelligible lingo at each other and to the shipping public. Further, without a system which gives us the cost of

the different elements comprising "Toll" and "Wharfage" we do not know, nor can we defend the sufficiency of the charges.

Assuming that terminal operators as business men are in the business to make a profit, and that services below cost are taboo, then competition would be a matter of division of charge between cargo and carrier or the ability of one port to do for a profit the same services at less cost than another port. Neither of these factors is a barrier to uniform cost systems and should weigh little in comparison with the advantages of a better understanding of what our services are, how much they cost and the ability to understand each other in discussing the terms which we apply to services.

The terminal industry has become more complicated each year, involving many items of service besides the simple handling of transit cargo across a pier. We have at our Spokane Street terminal, in addition to the regular transit service, ordinary and bonded dry storage, cold storage, fresh fish freezing and storage facilities, ice manufacturing and storage, industrial leases and space rentals. All of these services are, as you might say, under one roof. There is a constant co-mingling of labor and area in the uses of the facilities. Outside of the usual difficulties we all experience in getting proper allocation of direct labor costs from terminal men in charge of time sheets, there is no great difficulty, except in the amount of work involved, to obtain from accounts as set up by our accounting force, fairly accurate distribution of general expense as bases of costs for rate-making purposes. Doctor Edwards found the same conditions in his investigation of various private terminal accounts in the Bay Region.

Manifestly a cost system that will arrange our accounts not only for budgeting purposes but will reduce to a minimum the apportionment process will be a great advantage, and if such system can be made uniform, even for limited port areas, it will make a big advance over the present methods of cost finding and cost accounting. The work that Dr. Edwards has done will be of inestimable value. I am sure, if and when the terminal industry is ready to accept uniform cost accounting as a necessity. (Applause.)

PRESIDENT ABEL: Thank you, Mr. Chapman, for presenting Mr. Fadden's discussion. Mr. Fadden has given us material for thought. In connection with this matter of cost accounting, we will have a word from our Secretary, Mr. McCarl.

SECRETARY McCARL: You will notice on the program that Mr. T. G. Differding, Manager, Traffic Department of the Oakland Chamber of Commerce, was scheduled to prepare a written discussion. Mr. Differding, who assisted Dr. Edwards in the study a short time ago of Terminal Costs and Charges, just informed me yesterday that, due to the enormous amount of work involved in rate cases before regulatory bodies which required his attention, it had been impossible for him to prepare his paper. He stated he fully concurs in everything Dr. Edwards set forth in his paper, and also what Mr. Fadden had to say in his paper.

I might state that in connection with Dr. Edwards' paper, he made reference to a formula which accompanied the paper. That formula has been reproduced at considerable expense, and we have placed one copy in separate envelopes for each port. The envelopes are addressed and are available at the desk. If any additional copies are desired, please leave your name at the Registration Desk and we shall try to supply them if you don't ask for too many. The formula isn't very interesting reading but very valuable, and you can use it better at home than here.

Just a few remarks of my own in connection with this matter of cost study.

I think we have all been too prone to ignore entirely or give too little weight to the most important item of rate making, namely, the cost of service performed, and have given too much weight to the other two factors—competition and "what the traffic will bear." We know that competition and "what the traffic will bear" will have to be taken into consideration and play an important part in the matter of rate making, but not nearly to the extent the cost of the service performed should play.

In the matter of competition, where there are two or more services between various originating points and points of delivery, it is naturally necessary that one company meet the rates of its competitors to stay in business, but on working together and giving more consideration to the matter of cost, I think they can all save themselves a lot of money and obtain additional revenue. Further, in regard to competition, the location of competitive industries often affects the charges which can be assessed for the transportation of goods. Take cement, for example. In the case of a plant located in Oakland and one in Seattle, by reason of competition to the North, it might be necessary to carry cement a longer distance in this direction at the same or lower rate than for carrying it in other directions where no competitive cement plants exist.

In the case of "what the traffic will bear," I might cite the following. We have here in Oakland a company which produces a commodity known as Clorox. A few years ago when the steamship companies were considering increasing the rates on canned goods, they had to take into consideration the Clorox item, inasmuch as Clorox is packed in containers similar to canned goods, although canned goods are much higher-priced than Clorox. After one or two increases had been made, the Clorox people informed the transportation companies that they couldn't stand any more increases. However, inasmuch as labor and other costs had increased considerably the steamship people considered it necessary for them to increase their charges for transporting canned goods and dried fruits, the two largest moving commodities from California, and in order to do this, from the standpoint of comparison, it would also be necessary for them to increase the rate on Clorox. Although the Clorox officials expressed their opposition, the steamship companies nevertheless did increase the rate on Clorox as well as canned goods and dried fruit, and as a result the Clorox Company decided to establish additional plants in the Middle West and East. This is a case of where one commodity was able to stand the increased rate but another commodity was not.

It is necessary to take into consideration items of competition and "what the traffic will bear" in the making of all rates. But I think we should give more weight to the cost factor than we have in the past. I think there has been an inclination to place too much value on the item of "indirect benefits" in the determination of rates. There is no good reason I can see why the shipping public—shippers and transportation companies in the valleys and in trans-continental territories—who use the port facilities, should not contribute more toward the expense of maintaining and operating such facilities, so that same can be operated at a profit, or nearly so. We know it is necessary for public bodies during the pioneering stages to provide facilities in advance of actual requirements, so it is not always possible to make rates based upon the cost of public facilities, but by working with the private operators who are able to determine costs very closely, we can arrive at rates more commensurate with the cost of the service performed. (Applause.)

PRESIDENT ABEL: Thank you very much, Mr. McCarl. I think this cost matter is one of the most important things we have in our operations, and I hope during the coming year that more study will be given to it by the Association. I think it important that we do it, and in the next Convention we have further papers and discussion and probably the results from those studies can be presented at that time. I think we will get a lot of good out of it.

I don't think any convention, especially here on the coast, is complete without having Tom Lyons, tro

Washington, D. C., talk on foreign trade. We would like to have you come up and tell us all about Foreign Trade. (Applause.)

MR. LYONS: Mr. Chairman and gentlemen:

It has been rumored that my paper has been given the assignment of No. 9. In other words, to get behind the eight ball, but I don't know. Since I have joined the organization, I'll do my best to see that I stay in front of it from now on. (Laughter.) I also notice that in setting up my paper, my official capacity and also my address has been left out, intentionally. That is due to Dr. Edwards' remarks as to an expert. Unfortunately, I came from Washington—three thousand miles away—and I don't think that it would be advisable for me to advertise that anywhere except at this Convention, where I have some good friends.

Ports and Free Ports

By Thos. C. Lyons, *Chief of Transportation Division*
Department of Commerce
Washington, D. C.

At this, the second convention of your Association before which I have been privileged to appear, I feel that I have been accepted as an honorary member of undesignated standing. Your patience in listening to me I can attribute only to your interest in the foreign-trade zone as a desirable and even necessary complement to the facilities of a modern and complete port.

The function of a port has not been as thoroughly understood or encouraged in the United States as in some other countries. Since the war, increasing attention has been given to ports, and great progress has been made in most of our waterfront cities. There have been, and still are, many obstacles needing elimination or abatement before ports are free to perform the services usually rendered by an efficient organization.

Port Operation

The development and operation of a port is usually a long-range proposition, and somewhat similar to that which confronts an industry entering a new market. The tributary territory must be surveyed; the type of commerce that is likely to develop must be determined; the port facilities must be planned in accord with special conditions and type of commodities; tariffs must be adjusted to the most efficient level; there must be realization that income is not likely to equal expenses or to return costs for some years in the future, and finally, that sales promotion and solicitation are just as important to the success of the port as to any industry. To most ports, Emerson's principle of a mouse trap and a hermit has become a slogan or a way of life. This smug attitude is costing long-established ports millions in commerce to other, more aggressive localities. Particularly is it true of ports blessed with natural advantages, fine harbors, large and rich hinterlands, and locations on principal trade routes. Perhaps some excuse may be found for this attitude in ports where the terminals are modern and adequate, but it is certainly otherwise when there is a lack of coordination or a lack of proper port facilities in a harbor favored by nature. Business can be lost to another port, and it may not necessarily be one of our own, just as surely as business can be lost to a competitor, and for the same reasons. Unfortunately, it apparently takes longer for a port to realize that it is losing business, and the reasons, than it takes in private industry. Even after it does have such knowledge, remedial action is often delayed for years to the port's further detriment.

Port Functions

What are the functions of a port? Essentially they are to provide the meeting of land, air, and water transportation with space for the convenience of passengers, mail, and the holding of merchandise awaiting transfer between buyer and seller and between water and land. The engineer may plan a terminal of the finest construction, having the most modern handling equipment, but if the other facilities of the port are not coordinated with it, much of the terminal engineer's work goes for nothing. Experience has shown that a centralized coordination of piers, transit sheds, warehouses, railways, belt lines, motor trucks, lighters, and handling equipment is a prime requisite. Rates must be reasonable and equal all over the port for the same services. Freedom of movement between piers, between warehouses, and between railroads is essential. Port promotion, independently and in cooperation with railroads and steamship lines, is too often neglected, though the returns from such effort have proved its worth.

Port Efficiency

How should a port be operated? This brings us back to the analogy of a private enterprise. The brief answer is "efficiently." When we speak of a port we mean all the waterfront facilities of a city or a particular locality. If these waterfront facilities are divided up among a number of independent owners and operators, the chances of obtaining the proper cooperation and coordination are in reverse ratio to the number of separately controlled terminals. That is not port efficiency. If the piers are inadequate to handle the traffic coming to the port, congestion is the result. That is not port efficiency. If the piers are not modern so that handling costs are kept at the minimum, that is not port efficiency. If there is not a direct connection of the railroad and the motor trucks with the vessel at the pier, transfer costs and congestion increase. That is not port efficiency. If there are not shipside warehouses for transit cargo to eliminate unnecessary handling and cartage, the port does not have efficiency. If the costs of dockage, the costs of wharfage, the costs of transfer, the costs of warehousing are not equal for the same services, and are not reasonable at all points in the port, that is not port efficiency. If a port is not on its toes to bring cargo and ships to its piers and new industries to the community, that port is not efficient. So much for efficient port organization, though the few points mentioned by no means exhaust the list.

Port Problems

The problems facing port authorities are many times more difficult of solution than those of a business enterprise. Unfortunately, it is not a case of knowing what to do and doing it. Expediency, divisions of authority, lack of capital, conflicting policies of railroads and steamship lines, opposition from private terminal operators, warehousemen and draymen, all make more difficult the satisfactory solving of problems confronting the port authorities. Leaving the development of the port to railroads, steamship lines, private industries, and pier owners rarely results in building a modern port. It is a shirking of civic and state responsibilities not to have a pattern upon which a port logically may be developed and operated. It is an incalculable waste of money and land to permit the uneconomic use of waterfront property. An attractive, well planned port will derive more revenue and more satisfaction from users than any amount which may have been spent to bring it about.

Ports and Free Ports

You may ask, how does all this tie in with foreign-trade zones? I emphasize again that the foreign-trade zone is a desirable complement to the facilities of a modern and complete port. It is a condition precedent to zone establishment that the area of a port so set aside *must* have shipside warehousing, *must* furnish direct connection between ship and rail, *must* have sufficient space for minimum handling in the dispatch of cargo, and *must* provide all necessary facilities for the manipulation of merchandise. The foreign-trade zone act sets out a public yardstick of essential facilities by which existing ports and terminals may be compared. Because of these requirements a foreign-trade zone can set an example for the development of the rest of the port. But this is not all, for the zone offers to cargo, privileges not otherwise available in a port, and so rounds out the services that a major port should be able to provide.

Mobile Foreign-Trade Zone

You are probably wondering why, if all this is true, the foreign-trade zone at Mobile was abolished. I can say this, that the zone there was never given a chance to prove its worth. Opened in July a year ago, it was closed in January following several weeks of discussion, just when merchandise consigned to the zone began to arrive. In spite of all that is claimed for the principle of foreign-trade zones, it is not a miracle worker. A port or terminal would hardly be expected to pay its own way within six months of its establishment.

The Foreign-Trade Zones Board does not feel that a port community should undertake the establishment of a zone except as a

long-range proposition, and should not expect the operation to pay monetary dividends during its early stages.

New York Foreign-Trade Zone

The New York Zone is fortunate in having been sponsored by public officials who believe whole-heartedly in the free port principle and who have nursed the zone along until it is now out of the experimental stage. Occupancy of its existing storage and manipulation facilities has reached approximately 90 per cent. Extensive additions are under construction that, when completed, will provide a general utility building having space for dry storage, cold storage, and merchandise manipulation, and an 11,000 ton vegetable oil tank storage and pump system.

A glance at the figures for 1958 shows that the commodity tonnage entering the New York Zone was 267 per cent greater than in 1957, and commodity values were 380 per cent greater. In 1957, 92 lots of merchandise were handled, while 1,285 lots were handled last year, an increase of 1300 per cent.

A further glance at the figures indicates that in the first five months of this year the commodity tonnage handled equalled the tonnage of all of 1958, while commodity values for the five months period exceeded the entire twelve-months figure of last year. This suggests that for the year 1959, the 1958 ratio of increase will be maintained and possibly exceeded.

In a recent report of the deputy collector of customs at the zone it was stated that since opening in 1937, the zone had received 4,500 consignment lots weighing 100,000 tons and valued at $15,000,000. A total of 775,000 packages of various descriptions have gone to the zone and 50 ocean freighters have discharged cargo there.

Commodities have come to the zone from 19 European countries, 11 Asiatic countries, 7 African countries, 5 South American countries, 6 North American countries, and from the United States, Puerto Rico, and the Virgin Islands.

From the zone, goods have been re-exported to 15 countries of Europe, 4 Asiatic countries, and Australia, 3 African countries and Madagascar, 5 South American countries, 6 North American countries, and the United States.

Duties collected on merchandise entering the United States from the zone amounted to $656,533 during this period.

Among the more enthusiastic believers in the New York zone are customs brokers. These men, to whom the solution of problems of foreign commerce and the tariff mean their daily bread, have advised many of their clients of the advantages of the zone.

Upon the advice of a customs broker, a Scandinavian exporter brought pictures and picture frames to the zone. They arrived at different dates, by different vessels, and under different tariff classifications. Ordinarily, each lot would have to be entered separately, but by using the zone, pictures and frames were assembled and were then entered under a single entry. The benefits of a single entry are obvious. Not only that, but case lots were broken down, not permissible in bonded warehouses, and buyers were able to inspect individual pictures and frames and give orders for preferred combinations for assembly before delivery.

Another customs broker said that he advised a client, who is a fur buyer, to use the zone for the in transit inspection of fur scrap prior to reconsignment abroad for manufacture into plates. This quite obviously eliminates any need for a warehouse entry in order to inspect and sort the fur. Such entry, as you know, creates problems of proper valuation, production of consular invoice, and the liabilities under the bond.

In the case of an importer of canned corned beef, his customs broker explained to him the possibilities of the zone. As it has worked out, the importer is building a substantial trade and is far ahead of his competitors. The advantages of the zone, as explained by his customs broker, are storage of his product for unlimited periods of time, and the fact that the U. S. Department of Agriculture does not inspect his canned meat before customs entry. In effect, this means the importer has an opportunity to examine each shipment and recondition, return, or destroy defective cans. The importer is enabled to maintain a spot stock of unlabeled cans, ready for quick delivery to this country and Canada with the buyer's own label, a tremendous advantage over competitors and an impossibility without the zone.

A well-known explorer recently used the zone to collect and prepare his equipment for an extended trailer journey through Asia. Much of his equipment was highly dutiable had it entered customs territory, and in this regard the zone was of real service to him.

Perhaps the most spectacular sight at present in the zone is t[he] thousands of boxes, cases, crates, and lift vans containing the[ir] nature and personal effects of European refugees. It is also a vi[vid] and pathetic commentary on the European situation. In this m[ove]ment, the zone is serving a vital need. Under our customs laws [the] only logical alternative to the zone is the general order warehou[se] with its limited capacity, high costs, and one-year storage limit. [It] possible to enter such goods as conditionally free under a six month[s] bond, but there are few customs brokers or others that are willing [to] take the risk and responsibility of such a procedure. As the probl[em] solves itself in New York, personal effects that customs brokers c[on]sider a poor risk are sent to general order, and the rest are filling [the] New York zone in a very satisfactory manner.

To the Port of New York, the zone furnishes an example of a [com]plete terminal, having a published tariff of all charges, something [the] port has not seen in modern years.

To the foreign trader, the zone is a sanctuary for his goods, wh[ere] he can deposit them with customs immunity while he decides [what] and where he will market them.

The Pacific Coast Association of Port Authorities is doing and [has] done much to improve port service. Today, Pacific Coast ports [are] among the best equipped and most modern in the country. It [is] this reason these ports have been watching the progress of the [New] York foreign trade zone with great interest. The proof of this [zone's] success lies not only in the figures of its operation, but also in [the] enthusiasm of all that use its facilities or recommend its use to [others].

(Applause.)

PRESIDENT ABEL: Thank you, Mr. Lyons. It [is] fitte that you could come out from Washington [to] bring us up to date on Foreign Trade Zones. We appr[e]ciate having you with us.

Now we have a discussion of Mr. Lyons' paper [by] Mark Gates, Secretary of the Board of State Harbor Co[m]missioners, San Francisco, California.

MR. GATES: Mr. President and gentlemen:

Referring back to that matter of experts, when I start[ed] to write this discussion of Tom Lyons' paper on Foreign Trade Zones, I realized that he is the fellow who wr[ote] the book, so I was careful not to say too much.

Ports and Free Ports

Discussion by MARK H. GATES, *Secretary*
Board of State Harbor Commissioners
San Francisco, California

My good friend, Tom Lyons, has said he feels he has been [ac]cepted as an honorary member of this Association with undersc[ored] standing. He says further that our patience in listening to him [can] be attributed only to our interest in Foreign Trade Zones. I [would] in say for the membership of this Association that, if Foreign Tr[ade] Zones had never been heard of, Tom Lyons would still be [glad] and welcome to membership, because of his personality and g[ood] fellowship and the fact that he attaches enough importance to [the] Association to make the trip across the continent each year to [attend] its meetings.

I do not believe that the closing of the Mobile Foreign Trade Z[one] without a longer trial, nor whatever success has come to the N[ew] York Zone, is sufficient proof of the future of such zones in this co[un]try. But I do believe, as I have said before, that two things are esse[n]tial if these zones are to be as successful in the United States as they [have] been in foreign countries. One is that the law must be amended [to] allow greater latitude, and the other is that the Foreign Trade Zo[nes] Board rules must be liberalized to permit of more practical operati[on].

I realize that the law governing the operation of these zones [was] passed by the Congress, and that the Foreign Trade Zones Board c[an]not go beyond the provisions of this Act, and I will admit that amen[d]ing the law to the extent of allowing manufacturing and other des[ired] changes within the Zone may be difficult of accomplishment. B[ut] contend that the Foreign Trade Zones Board can do much to [en]courage the establishment of zones in various United States ports

a more practical view of the situation and still stay within the and spirit of the law.

e Port of San Francisco offered to establish a Zone at Pier 45. port is one of the best piers on the west coast. It is our opinion it is admirably adapted to the purpose of Foreign Trade Zone ations, but the Foreign Trade Zones Board has decided otherwise. That board has demanded that we meet certain conditions, of which we consider unnecessary and some of which are prac- ly impossible.

he Foreign Trade Zones Board also demands a site and facilities h will provide for expansion far beyond anything which can be ipated within the next few years on the basis of the operations of only established zone—that at New York.

e were willing to set aside a two-million-dollar facility for the ose of trying out this experiment, knowing full well, from our investigations, that it would not pay for some time. But the gn Trade Zones Board has refused to grant the permit at this

ne of the important expense items is that for United States Cus- guards and other services. Under ordinary circumstances, these ses are absorbed by the Federal Government, whereas in For- Trade Zones the expense of maintaining guards must be borne he operators of the Zone. The estimated expense of this service at Francisco is approximately $1800 per month. The Foreign Trade s Board also requires that the site be barricaded, not only on the side, but also on the water side. In the New York Zone the water is protected by an electric eye. The Foreign Trade Zones Board ys these precautions are necessary to protect the revenues of the ral Government, and to prevent smuggling. Such elaborate and ensive protection seems rather unnecessary, when it is considered ne such precautions are considered necessary when foreign cargo dled on the ordinary piers. It would seem that the use of facil- which are considered the last word for cargo handling, should ood enough for foreign trade-zone operations and that barricades customs supervision should be reduced to the minimum. If this s were followed, it might result in the establishment of addi- al zones, while, on the other hand, if sufficient unnecessary ex- e is added to the cost of handling the cargo in the zones, this t cause shippers to resort to the drawback system for the same ds at less cost. (Applause.)

RESIDENT ABEL: Thank you, Mark. We appre- your discussion very much.

The program, as far as papers are concerned, is now pleted for this afternoon. I will ask the Secretary to e some announcements, but before doing so, I want k you, if you possibly can, to be down at the meeting n as early as possible tomorrow morning, so we can t on time, as we will have a busy day.

respect to the trip to the Airport and on the Doug- Mainliners, it appears the United Air Lines have had sual demands on their equipment, and it will be pos- for them to use only one Douglas Mainliner to make e trips over the Bay and around Oakland. The ted Air Lines can handle no more than one hundred these trips, and as we already have more than that ber signed up, we would appreciate it if you would this into consideration.

ECRETARY McCARL: First, we have a letter from Haslett Warehouse Company in connection with gn Trade Zones. It is addressed to the Pacific Coast ciation of Port Authorities.

Gentlemen:

Information has reached us that your Association will discuss the ject of a Foreign Trade Zone during the present Convention. If establishment of such an area is seriously contemplated in Oak- land on the East Bay we would like your Organization to be informed that members of our industry and our company are definitely opposed to it. Previous investigations of the need of this type of facility in San Francisco Bay area have all resulted in the conclusion that there was no need for it, that it would accomplish no good, and that it would be very harmful to our industry.

In the event you would like the views of our industry discussed with or presented to your group or a committee handling this subject, our representative will respond to your convenience.

Wishing you every success with your Convention, we are,

Yours very truly,

HASLETT WAREHOUSE COMPANY,
(Signed) Hyland Huffman, *Manager*
Oakland Division

I would like to add one more item of appreciation to Dr. Edwards. I happen to know of the great amount of work that he had to put in working out that formula which accompanied his paper. I was over to his house on a Sunday and he had a lot of papers around on his desk and I asked him what he was doing. He said, "I am working on that very nice little subject you assigned me." I know what an easy question it is to ask, "What is the cost of operating marine terminal facilities and what is the cost of dockage, tolls, storage, etc.?" We can well appreciate the time spent in working out a formula to determine those costs as well as all the other items of costs in terminal operations; that it required the burning of midnight oil, and I know Dr. Edwards didn't do much of the work at the office. So I think the records should show a vote of thanks to Dr. Edwards for this splendid piece of work. We might show it in the way of applause. (Applause.)

PRESIDENT ABEL: If there is no further business, I will entertain a motion to adjourn.

Upon a motion duly made and seconded, the meeting was adjourned at 5:00 P. M.

FRIDAY, AUGUST 25, 1939
9:45 A. M.

The meeting was called to order by President Abel, acting as Chairman.

PRESIDENT ABEL: I believe the Secretary has a communication to read.

SECRETARY McCARL: I have one here from the State Port Authority of Virginia:

Dear Mr. Abel:

I have before me your good favor of the 14th, and I had my plans tentatively perfected to be on the Coast and in your section about August 23, but matters of an unforeseen nature developed and my Coast visit is necessarily postponed, and as at now looks, I will not be able to get away until some time next Spring and I hope nothing will prevent my doing so.

I should enjoy especially the opportunity of meeting the members of your Pacific Coast Association at your coming convention, August 23 to 26, but I hope to have the pleasure of meeting them individually at their home station next Spring. I want to thank you for

your kind invitation to be with you all, and I wish for you a most successful meeting.

With kindest regards, I am,

Very truly yours,

(Signed) W. A. Cox,

Director of the Port.

Also, there is one here from C. A. Cotterell of Vancouver, B. C.:

Dear Mr. Abel

I sincerely appreciate your very kind letter of July 11th, extending such a cordial invitation to Mrs. Cotterell and myself to attend the Twenty-sixth Annual Convention of the Pacific Coast Association of Port Authorities at Oakland, August 23rd to 26th.

While I have been planning on visiting the Golden Gate International Exposition, am very doubtful if it will be possible for me to be in your city during the dates mentioned, as, I expect, our Chairman and President will be in the British Columbia District, in the course of his annual inspection trip, about that time. However, should I be down your way this Fall, I shall certainly endeavor to see you.

With best wishes for the success of the Convention, which I know will be a very pleasant and interesting affair.

With kindest regards,

Yours sincerely,

(Signed) C. A. Cotterell.

PRESIDENT ABEL: Thank you, Secretary McCarl.

MR. FRED PARR (Richmond): Last night at the delightful dinner we had at Pier Forty-five, I met Mr. Peterson of the *Daily Commercial News*, and he said that he would like to have a resolution introduced for consideration of this body, representing the Pacific Coast States and Canada, in the interest of trying to get the governors to take some active part in trying to bring these conflicting bodies together. I only had a passing conversation with him, and I said, "I'll introduce you to Mr. Carroll of the Resolutions Committee." Mr. Carroll said, "If anybody wants to introduce a resolution, we'll be glad to have it considered." I said, "All right, it will be presented to the committee." Mr. Peterson went to his office and drafted a resolution, and I notice it is published under my head in the *Daily Commercial News*, and I know nothing about it. I appreciate the fact that I am not a voting member of this body. However, I do have the privilege of presenting things for consideration. I did not agree to present the matter to the Resolutions Committee until I had talked with a member of that committee, Mr. Carroll. I am glad to have the resolution considered by the committee, but I want it considered on its merits, and I want it to be recommended and adopted by this body. I, myself, would like to study the resolution and see the real purpose and importance of it, and see if any good could be accomplished by it if adopted. I just wanted to state my position in this matter.

MR. JOSEPH F. MARIAS (San Francisco): Mr. Peterson came to me last night and thought, because I was appointed by the Governor that I should get in telephonic communication with him. He offered absolutely nothing that a Governor of California, Oregon or Washington could do or consider, and I told him that so far as I know, and I think I do know, that all the machinery for arbitration and settling the controversy is in motion and is working about twenty-four hours a day. So I would say that if this organization does accept from the committee a resolution for the Governor, that you please consider that the Governor is bound by certain regulations of his office. He has to be careful, and while I'm sure, because I know our Governor so well, that he is doing what he can, and he does want to stop this true threat of strike; that if you suggest something, suggest something that he can do, and not something that you know he can't do.

PRESIDENT ABEL: Thank you very much, Mr. Marias. I think the statements you have made will be very helpful. I might state that this matter has come to my attention from two sources this morning. The parties were very much exercised about the matter. I think that probably the very special dinner we had last night had something to do with the affair. Now, inasmuch as the effect of the dinner has worn off, we can think of it in a better light, and give it better consideration. As I understand it, the matter is before the Resolutions Committee at the present time.

The first paper this morning is Paper No. 10, "Legal Problems Confronting the Ports," by Markell C. Baer, formerly Attorney for the Port of Oakland. Mr. Baer is not in the city, and I am going to ask Mr. Reginald Jones, Assistant Port Attorney, to present Mr. Baer's paper.

MR. JONES: Mr. President and gentlemen of the Association:

Legal Problems Confronting the Ports

By MARKELL C. BAER, *Formerly Port Attorney*
Board of Port Commissioners
Oakland, California

It is reasonable to assume that in the beginning of time, when ports first were established in the face of the globe, there were no legal problems to confront them. At least, in reading of the voyages of the old Phoenicians, who, we are told, operated our world's first mercantile marine, and of the public projects of the Romans, who established among others, a port on the seacoast near Rome and later another at Carthage, in Africa, one learns nothing of perplexing legal problems which beset the early port officials of history, whoever they may have been.

Possibly the answer lies in the fact that in very early times ports consisted of natural landing places for ships sailing the coasts. Such harbor structures as were created by the inhabitants were merely crude wharves designed to facilitate the easier berthing of a small galley or sailing craft. Even our common law of a later time refers to a wharf or pier as being merely in the nature of an extension of a highway. It is doubtful if in those earlier days there was established anywhere a governmental body in the form of a shoreside terminal organization with its system of terminal rates and practices.

Probably legal problems did not arise in such times, for the very good reason that there were then no complex problems of port administration and operation to solve. Then, again, the answer may lie in the fact that, as history writes along, the importance of the issues of the past fade into mere nothingness and are soon forgotten, which but emphasizes the unalterable fact that lawyers may not be the enduring position in the affairs of men they may imagine.

But in any event, when we come down to the present day we find the complexities of port development and the intricacies of terms

operations, with their multifarious problems reaching into the commercial life of modern civilization, rapidly increasing with the inevitable necessity of turning again and again for better or for worse to the law for guidance. Such are the complications of our modern life and its affairs.

In this discussion today it is not intended to submit a learned exposition of the legal problems which now confront the ports and to point out their solutions. There are other lawyers present, and also many port officials who have acquired by experience and study a considerable knowledge of law and its bearing on port problems. No lawyer, having a proper conception of the ethics of his associates and knowing that it is inconceivable to expect a full concurrence in any view expressed, would dare to express an opinion and expect it to go unchallenged. Hence we shall deal with this occasion as a sort of a legal seminar, and by suggesting some of the problems which come to mind open the way for the presentation of views of perhaps greater significance, all in the hope that out of the mind clash suggestions of value may come out of the discussion.

Without attempting to give any thought to order of presentation, one's thought first turns to the claim of the Federal Government to the ownership of our submerged tidelands. As we all now know, certain such officials in Washington, particularly those connected with the Navy Department and the Department of the Interior, have within the past months laid a serious claim to the ownership of submerged tidelands, and have sought to secure the passage of Congressional legislation for the purpose of officially asserting Federal claim of title and of causing the same to be litigated.

In part, this claim of Federal title was inspired by a desire of the government to secure control of the vast subsurface deposits of petroleum oil which are found in the coastal submerged tidelands of Texas. But behind it all there appears to be a fixed determination on the part of certain such officials of the administration to make all the submerged lands of the nation, including the harbors and navigable and public improvements to be found thereon, under a centralized control of Federal domination and direction as the case may be. Dreaming of this nation might the power to plan and to control the future, with the philosophers of the ancient cities of Athens.

The idea of the outset presented an apparently strong case, by particularly concerned our ports, which, after one hundred and fifty years of legal precedent as expressed in the pronouncements of our national courts, had been granted the ownership of submerged lands, either as grantees of the states or through prescription. It was a disturbing thought to contemplate the possibility that all the harbor facilities and wharfs built out into the navigable waters and even much of the property in such harbors, as the Supreme Court, as now understood, be found to belong to the Federal Government.

The ports of the nation, as you know, through the various attorneys general of the states and general counsel, have united effectively through the American Association of Port Authorities, as you know in its laws and legislative committees, of which I had personal knowledge, to prevent, made a determined fight in Congress against the proposed legislation. Apparently the fight was won, but lay in the strong subcommittee of the House of Representatives especially against the enactment of the proposed legislation.

But the fight is not yet finished. Only last July a new bill was introduced in Congress which is designed to grant to the Department of the Interior authority to enter into leases of such tidelands of the nation as to which the Government might hold title. Such a law would naturally permit a lease to be made of submerged tidelands under a mere claim of title and thus would help the cause of the very assertion of title by the Government that the latter legislation contemplated in a more direct form. This is a matter which none of the ports for a moment may lose sight of. Indeed, in some way or other, the Government will bring the issue of its claim of title before the courts and will prosecute the case to the Supreme Court of the United States, where many years of liberal view of the ancient law and precedent to be taken, with a tendency to lean in favor of the Government as against the claims of the states and the ports.

Such form of Federal legislation may seem to point in the direction of more which some believe to be. That is the movement now afoot in Congress and by the President, who has recommended taxation by the Federal Government of the interest payable upon public securities of the states and cities.

As this matter involves a widely broad than port legislation, there was organized, as you know, a national group, made up of the attorneys general of some 40 states and numerous city officials, which was known as the Conference on State Defense. Happening to be appointed as a member of the executive committee of the Conference, I recently appeared in Washington to debate this proposal before the Ways and Means Committee of the House of Representatives. We were successful to the extent of preventing any action by Congress at the session which has just adjourned.

But the issue as presented is still a live one, replete with vital and important consequences in its application to the welfare of the ports of the nation. Grant that the Federal Government, as claimed, has the authority to tax the interest payable upon municipal and state securities, then, by the same token, it has the legal authority to tax the income and revenues of our port organizations. And if it can do that, it can tax existing public securities, for once the power of supreme federal taxation over the states and their political subdivisions is granted in one respect, it becomes absolute, unrestricted and unlimited.

With such authority recognized to exist in Congress, Congress will have the power to classify and reclassify the ports. By placing certain ports in one category and others in another, or by favoring one type of port development over another, it could virtually regulate and control by federal power such local independence of action as we now enjoy. Gradually any such course of action would lead to centralization of power in Washington. Gradually it would mean the subjection of the ports of this nation to a system of Federal control and then as political considerations arise, it would permit political powers to play one part of the country against another, thereby bringing about the gradual breakdown of our old American system of local autonomy and local control.

Such is one of the problems which now lies lurking to besiege the welfare of our ports.

All this is beside the important point just determined through the sensational reversal by the United States Supreme Court of its established precedent of a hundred and more years by which the court declared that the Federal Government possessed power to tax the salaries and the port and other public officials [illegible] as recently, 301 U. S. 308.

No doubt you know what this means, but if you do not, it behooves you, as public officials, to set up personal budgets to account for meeting your public salaries and any expenses, such as donations to a port charitable affair, or whatever will make it safe to be deductible, and to prepare yourself for the filing of income tax returns next March. And you cannot to defend yourselves against the actions and investigations of the Federal income tax collectors, the Federal income tax investigators and the Federal income tax accounts, who will be sure to call upon you with great peculiar interest and inconvenience to you regarding your personal affairs, the like of which you have never before dreamed of. There is no right of that. As public officials most of us are to encounter a new set of experiences, unknown [illegible] pursuant to love and to the taxes but we shall have already found out what an interesting time it is.

Incidentally, it is to be hoped that you will find your rights have not been all well to the [illegible] are entitled to recover from the government such income taxes as you might have paid on your high salary previous to January 1st of this year.

Without wisdom of the trend toward Federal control of port organizations as revealed in the legislation for Federal control of the tidelands and of Federal taxation of port revenues and public securities, but the Federal Government is [illegible] to its loss and it has [illegible] to abandon such the determination to assume.

Perhaps [illegible] step in the direction of Federal control of the [illegible] in the compact [illegible] the Maritime Commission to [illegible] to guide the terminal [illegible] of the nation, whether they be public or privately owned and operated. The passage of the Maritime Act is thought by certain legal authorities to convey such [illegible] but the matter is not entirely free from doubt.

In connection with the Port of [illegible], where the State of Maryland [illegible] and operates [illegible] the Maryland Port Commission is a [illegible] agency, [illegible] that such a state organization should be [illegible] with the Commission and should submit to the [illegible] and to terminal and harbor [illegible] Baker S. 481. A most [illegible] has not been rendered. Then later the Supreme Court of [illegible] in a lengthy

opinion, reached the same conclusion, holding to the view that where Congress, in its regulation of interstate and foreign commerce, has assumed to occupy the field of regulating water transportation, including the operation of public wharves, its authority became complete and all embracing, leaving no room for state or local regulation (*McNeely & Price Co. vs. Philadelphia Piers*, 196 Atl. 846).

However, last January the Supreme Court of the United States, in a case arising out of the Territory of Hawaii, held that Congress, by the adoption of its shipping acts, had not intended to occupy the entire field of regulation which covered public utility operations pertaining to interstate shipping and to local wharves; and that as a consequence the local authority in many respects still operated (*Inter-Island Steam Nav. Co. v. Hawaii*, 83 L. Ed. 198).

At first glance, such decisions seem to fall within the line of established judicial precedent. They generally meet with little objection. Indeed, on the eastern coast an association of marine terminal operators, has expressed itself as favoring the regulation by Congress of local terminal operations—public, as well as private—contending that it will lead to a more uniform development of the business and a more stable industry.

There may be some merit to the contention. On the other hand, we as Americans must keep ever before us the fact that the strength and character of our nation, which has become the admiration and the envy of the people throughout the world, have been brought about by our Federal system of states, whereby each state until the present time has been recognized to be an independent sovereignty, with power and authority to develop its own plan of government, to promote its own internal welfare; and to guide the destiny of its own people in such manner as it may, through its own people, deem just and expedient. Ours is a system of local democracy, and our public port organizations are the creatures of our own voters working through their own representative governments.

As it is inconceivable that any one government of Europe, for example, may dominate the political institutions of another government unless it conquers such government by military force or absorbs it into its own organization by international intrigue with other nations, it is likewise inconceivable that the states, as independent sovereignties, should be subject to control by the Federal Government beyond those details which are expressly set forth in the Constitution of the United States as the limited powers granted to such Federal Government.

These provisions of the Constitution must be read in the light of the philosophy and purpose of the Federal union as interpreted by the courts and understood by our people. So read, it seems a logical conclusion that the commerce clause of the Constitution must be understood as limited by the reserved power of the states in the carrying on of their own governmental activities, and that whatever may be the power of Congress in regulating privately operated facilities of commerce, that power ceases when the effect is to direct and control the rights of the states and their political subdivisions.

If Congress has power to directly regulate the rates, practices and policies of publicly operated port organizations, it can lawfully extend such regulations as far as it may deem expedient. It may require the securing of certificates of public convenience by public port agencies which may seek to extend their harbor facilities. It may say to the Port of Portland, for example, that should it embark upon a program of liberal rates in order to foster the development of the Hood River apple traffic, such practices would be deemed detrimental to the commerce from California and must be avoided. It may say to the Port of Seattle, which may propose the construction of a new terminal structure, that such facility is not needed, while turning to the Port of San Francisco, and not only improving a similar development, but even sanctioning the grant of Federal funds to aid its completion.

The carrying on of such activities is truly a local function of the state organization and of their political subdivisions. Each state was originally intended to be free to promote in its own manner its own local development. Can it for a moment be conceived that Massachusetts or Virginia would have ratified the Federal constitution had its patriots of early days known that the national government which it was creating would in time assume the power to tell its own local political government representatives what parocular port facilities they might build, or to direct them as to the manner in which they might operate them for their own benefit.

It is not a question as to what Congress may in fact do which concerns us, but the power which it is seeking to acquire. It has enacted recent laws which provide for the assessing of taxes for social security, for unemployment relief, for the activities of the National Labor Relations Board, and for other details of government, a phase of the power granted to it under the commerce clause of the Constitution. At present, these statutes of Congress and others of like character expressly declare that their provisions shall not govern public agencies. Doubtless Congress, in general, still assumes that possesses no direct power of control over such public bodies; but it be now determined that states and municipal agencies operating facilities in connection with interstate and foreign commerce are much subject to the control of congress as any private institution engaged in such business, then it must logically follow that public port organizations should likewise comply with all these national laws.

This raises important questions of local policy. What would become of municipal pension systems which may conflict with the national social security provisions? How would a municipal port agency continue to apply its local civil service regulations in the hiring and discharging of its own employees should such provisions be deemed by the National Labor Relations Board to conflict with any wage tions it may establish? Indeed, how could a city enter into collective bargaining agreements with its employees while at the same time preserving the principles of civil service?

These are all important and vital problems of government which we face today. They present far-reaching legal considerations which we as port officials cannot ignore.

Take, for example, the law of public franchises. Since the foundation of our system of common law by the early English judges long prior to the formation of our American states, it was recognized that the right of private persons to carry on certain activities involved the exercise of a privilege to be secured by a grant from the king or sovereign. This gave rise to what is known as the law of franchise, which generally embraces the operation of public utilities. As a consequence to this day it is commonly recognized that certain activities of citizen cannot be carried on unless a franchise has been first secured from the state government or from a municipality where franchise powers have been delegated to it.

Thus the right to operate a railroad, or to carry on the business of supplying the inhabitants with electric power, with gas and water, other public utility services involve the exercise of a right of franchise.

Among such franchise rights, as illustrated by legal precedent from time immemorial, is the right to operate a wharf for public service and to charge dockage and tolls. There are many examples of such franchises to be found in the published law reports.

With the recent development of public terminal operations as carried on by private enterprise, it has been recognized by legal authorities that such enterprises are public utilities in character and should be permitted to operate only upon the securing of proper franchise from the state government. In many instances, the necessity of securing such a public franchise for such terminal operations has been overlooked. In many localities it appears that the existing law has been allowed to fall into disuse in so far as it affects the operation of wharves and terminal facilities, or its application has not been appreciated.

The law has its own important significance. By the requirement of such a franchise, local public authorities are placed in a position to pass upon the location, type and character of a proposed public terminal establishment and to exercise a supervision over the general development of shipping facilities of the local harbor. Thus an opportunity is afforded them to properly guide the general program of harbor expansion and to provide for the better handling of shipping and commerce.

Seeking to test out the legal scope of such franchise provisions and to apply them in California, a series of cases were instituted recently by the Port of Oakland. Such litigation met with violent opposition from private terminal operators, and appeals are now pending before the higher courts of the state. Among other contentions which were made in opposition to the exercise of such ancient power was the contention that as Congress, through its Maritime Commission, had assumed a certain authority over terminal operations, the authority of the state had been destroyed and local officials now retained no right of local control, not even the right to grant a franchise for the operation of a public wharf.

The argument goes further. It is contended by some persons that even the authority of such state institutions as the California Railroad Commission has been nullified and that as a result, where Congress

its Federal agency, fails to act. The local private terminal operator is left entirely free from public regulation of any sort.

There are serious issues. As they are fought over in the courts and are emphasized by the statutes of Congress, they are bound to grow in importance and significance and to give their bearing upon the problems of every locality and every successful organization of the coast.

This carries our thoughts to another phase of governmental regulation. What should we say as to the present activities of the Maritime Commission in its control of the shipping industry itself? Incidentally the question touches upon the important political issue as to whether the Commission's authority as it now exists, or in some form, should be entrusted into that of the Interstate Commerce Commission or should be retained where it is. But we need not go into that issue at this time.

There is suggested, however, the question as to what seems the continuous way to a complete unity of newly granted jurisdiction and maintaining rate regulatory powers. The recent hearings which at conclusion in the cities of Washington, New Orleans, San Francisco and New York revealed the astounding financial losses of the intercoastal carriers and sought to the conclusion that either the Commission must find some new legal or system of rate by which the shipping companies may increase their revenues, or must endure the elimination of unnecessary services which the steamship lines are now rendering to the public. Perhaps such figures will be overstated, but to any event it is apparent that serious study must be given by the Commission to the question whether the steamship lines are rendering unnecessary services by rendering of shallow water ports at the same rates which apply at the nearest regular established port of call. This is still being an important vital question to maintain a reasonable and, interests a long of thought which could profitably call attention for all the time which is available for the discussion.

But time is running short and other speakers are to be heard from. Suffice it to say and that as the modern form of port organization grows into its own field of enterprise, and as shipping and commerce develop their many intricate and technical problems of modern industrial and commercial activity, the legal problems which confront the ports are increasing in number with ever increasing size and complexity. The ports must be vigilant. Not only must they keep abreast with adequately with the collation of accounts, the fixing of local rates and charges, the making of contracts, the entering into of administrative leases and the perfecting of their internal organizations, but they must be prepared to cope as well times with the many legal problems which are pressing upon them from without and to defend their very rights of existence that they may continue to preserve their independent rights to places in the sun and may continue to serve the commercial shipping requirements of their local communities and to perform exchange in advancing the public interest. (Applause.)

PRESIDENT ABEL: Thank you, Mr. Jones, for presenting Mr. Baer's paper. We appreciate it.

At this time may we pause and request a word from Mr. Marcus? I think the Association as a whole is unanimous in the matter of thanking Mr. Marcus very much for the splendid time we had in San Francisco last night. It was indeed a very delightful affair.

MR. JOSEPH MARCUS: Gentlemen, I may take a moment of your time, as I have to leave to make a radio broadcast, for the nation is waiting for me to report on your behavior last night. (Laughter.) But before leaving, I would like to say this: that we, as neighbors of the host city of Oakland, wish to extend a welcome to you also, and to extend an invitation to come over to us and with us, see whatever you want to see in San Francisco. That is only, of course, after the host has shown you all of the hospitality that he has at his command during this convention. I want to say also that I appreciate very much getting back into the fold. I appreciate very much the way you have received me, and I want to say that I am in one hundred per cent cooperation with the spirit of this organization. It's like going to school. We come in here and read and listen to interesting subjects and then we recess and go out and raise hell. (Laughter.) There's one little thought that I would like to also leave and put in the records. This—San Francisco from time to time has been accused of giving conditions and rates under what other ports thought fair. I want to assure you that in that spirit we are only trying to hold down all costs in the interest of, as I said before, moving the commodity from the producer to the consumer, but this is the thing that I would like to put over. We do not intend to be the old horse in the race and hold up the ordinary procedure of cooperation. We believe that all port regulations and charges should be of a uniform nature. I have said, and want to repeat, that we will not chisel, but we will not be chiseled against. We believe that if we make port regulations and charges, that the competition then must be at the source of the producing areas and if you agree with me, gentlemen—and we may meet frequently, I am sure you will never have cause to complain against San Francisco. Thanks so much, Mr. Abel, for the opportunity and we will greet you all in Milwaukee. (Applause.)

PRESIDENT ABEL: Thanks so much, Joe. I wish you could stay throughout the session.

We have next a discussion of Mr. Baer's paper by Mr. George D. LaRoche, Counsel of the Commission of Public Docks, Portland, Oregon.

MR. LAROCHE: Mr. Chairman and gentlemen of the Pacific Coast Association of Port Authorities:

Legal Problems Confronting the Ports

[illegible] George D. LaRoche, Counsel
Commission of Public Docks
Portland, Oregon

As I am going to discuss [illegible] to me when requested to [illegible] discussion of Mr. Baer's paper. He has given you a splendid presentation upon the subject with [illegible] with [illegible] organization. Mr. Baer has been very active in protecting the [illegible] position in relation to the different federal agencies [illegible] very naturally, well versed and acquainted with the subject. It might be [illegible] to comment upon his paper. That I intend to do on the main. I am in accordance with what he says and [illegible] to add to it, but I am going to [illegible] not being [illegible] technical.

Mr. Baer [illegible] the fact that in early times [illegible] were [illegible] with [illegible] comparable to those of today. I [illegible] to it that the reason for this might be that in those days the [illegible] were of more simple construction and operation. It is true that the legal problems of terminal operators have increased and are increasing to [illegible] with the advent of each new year. This [illegible] of every [illegible] and line of endeavor.

Mr. Baer has stated that there are many legal problems confronting [illegible]. Most of these questions need to have, however, involve [illegible] and the operation of your economic and governmental [illegible] with the philosophy involved and

the objectives sought to be gained, then as legal problems they fade away into nothingness. If you disagree, and to the extent that you do disagree, are they serious legal problems or problems at all. It is not necessary for me to emphasize or delineate in detail that our dual form of sovereignty of the past is the foundation of our greatness and our liberty. This is a Federal Government composed of not only a central government but of 48 separate states. Independence of these states and their freedom of action within their sphere is our guarantee of the continued enjoyment of our individual happiness and freedom.

It might be well to pause and give consideration to the reason or cause for the existence of the particular legal problems that have been mentioned. In a large measure it is due to our mental processes of today resulting in our advocacy of selfish legislation and our increasing dependence upon government and governmental bounty. When things are not just to our liking, how often one of us uses this expression, "There ought to be a law against it"? And the sad part of it is that we do not stop there but actively undertake the passage of a law to serve our own interest. So we have a law that we think aids our cause and incidentally injures or restricts someone else. Around and around we go in this vicious circle. New bureaus are set up and a new "estate" is created that thereafter desires to continue to live and to grow. Power begets power, and the old saying of "the best government is the least government," is relegated to a pretty phantasy of antiquity. What was originally started in good faith, though selfishly, in the end ensnares the authors.

Though we have innocently played a part in making a lot of this possible, there would appear to be those who have deliberately set out to change our ways of doing things. Notwithstanding that the accomplishments of this country as a nation were based upon these time-tested American ways. Many of the new laws and proposed laws if viewed singly, though bad and dangerous, create no alarm. If you would gather them all together for scrutiny, they seem to form a pattern, a pattern for the centralization of governmental power at Washington, with the states relegated to supine empty shells of their former functional purposes and with the individual restricted, regulated and prohibited until there would seem to be the need for another Runnymede or a new Declaration of Independence. As an illustration of these laws and proposed laws that seem to lead us in that direction, we have the proposed taxation of states and their subdivisions, the Wage and Hours legislation, the Nye Resolution for the nationalization of all property in event of war, the division of the country into conservation districts (or maybe more correctly described as dividing this country into provinces); the bill relative to submerged lands, placing water carriers and wharfingers under the Interstate Commerce Commission, the Social Security and all the agricultural legislation and labor legislation. That is just a part of the hand that has been disclosed and the force behind it all is impelling us in a central direction.

As to the specific matters of legal import mentioned by Mr. Baer, I desire to only make brief comment, and the first of such problems is the threat to tax the states. You are more or less familiar with this, so it is not necessary to discuss it in detail. However, I wish to remind you of the old truth stated by Chief Justice Marshall, "That the power to tax is the power to destroy." In order to fight this vicious, far-reaching proposal there was formed, as you know, an organization known as the "Conference on State Defense." This was an appropriate name for this organization, which admirably has acquitted itself. However, is it not a rather sad commentary as to the way we have been headed and upon the times that we had need of such a group united for such a cause? There appears to be need for the continued existence of such an organization, and it should not be allowed to disintegrate when this particular problem is ended. It might be difficult to create the same interest in other causes, but its continued existence should be assured, so like a soldier on guard duty it can challenge any lurking intruder or legislation that threatens our dual form of government and our individual freedom of action.

You are all conversant with the proposed bill covering submerged tide lands, and this organization went on record last year by way of a resolution in regard to it. There is just one thought I desire to express on this subject. This legislation was aimed primarily at the oil lands of California, and many of you undoubtedly thought, therefore, that it was of no particular concern or interest to you. If I am correct in that assumption, then you overlooked the establishment of a dangerous and serious precedent and principle and one that would have ensnared you all in the end. In studying these different proposed laws, one must look deeply into them and ascertain the ultimate effect if passed rather than only the immediate effect.

The principal problem, legal or otherwise, with which you are confronted, is that of the proposed regulation of terminal operators, whether there should be or is to be such regulation, and if there is to be regulation the form such regulation should take. You have all individually given consideration to this subject in the past and also as an association you have studied and discussed it.

Is regulation necessary or is the common law rule sufficient that requires that charges should be reasonable and that all using the facilities of a wharfinger can do so upon equal and reasonable terms and conditions. The alternatives seem to be:

1. No regulation except as the common law tends to or can be invoked to restrict and regulate.
2. State regulation; and if uniformity throughout the land is desired, then the addition of interstate pacts.
3. Voluntary agreements by the operators for solving, regulating and stabilizing their problems and their business.

Possibly the combination of the first and third alternative is preferable and can be made workable with a proper consciousness of responsibility and desire upon the ones involved.

Federal regulation can only be justified in order to protect the public, and the common law restrictions upon wharfingers, if invoked, would seem to supply that protection. If centralization of our government is desired, if our economics are to be regimented, if the poor inefficient operator is to be secured against his own ineptitude and his inexperience and inefficient business practices, then Federal regulation is the answer. If there is to be regulation, it would seem advisable to leave it with the states. The states have the power to regulate. However, this power can be nullified by Congress entering the field, at least as to interstate commerce. As you know, the Supreme Court in recent decisions has given a very broad definition to that term so that it now has a meaning unknown to us a few years ago. Also the courts have held that the Federal Government by an act of Congress can divest the states of regulatory power over interstate terminals by just entering that field.

In the event of Federal regulation, the question arises whether state and municipal operators should also be subjected to such a regulatory enactment. The private operator, of course, in most instances can see no reason why they should not be painted by the same brush. On the other hand, the answer is made: Why should one governmental agency regulate another governmental agency acting within its sphere of authority? Why is one agency morally or otherwise better fitted than the other to see that the operations are conducted fairly and reasonably, particularly where there is no element of private profit that often leads to bad practices.

Mr. Baer, while discussing this subject, suggested with a great deal of logic that the commerce clause of the constitution must be understood as limited by the reserved power of the states, and that Congressional power ceases when the effect is to direct and control the rights of the states and their subdivisions. In this day and age we must face realities. The Supreme Court, in deciding a case involving the belt line railroad of San Francisco with respect to the application of the Federal Safety Appliance Act, seems to have foreclosed the matter. The court in this case, among other things, said: "California by engaging in interstate commerce by railway, has subjected itself to the commerce power and is liable for a violation of the safety appliance act as are other carriers. . . ." There is no use in assuming that the same reasoning would not be applied to state or municipally owned wharves with relation to regulatory laws.

Bills providing for the regulation of wharfingers by the Interstate Commerce Commission in addition to transferring the regulation of water carriers to that Commission have nearly become a law. The Wheeler-Lea bill passed the Senate and a House substitute passed the House. Irreconcilable differences appear that cannot be adjusted in committee, so apparently we are spared for a while. It behooves you to get busy if you are opposed to this legislation, and perhaps with renewed effort and an awakening Congress that is again asserting itself, the cancerous cancer of control and regulation may be averted from fastening its tentacles to terminal operators. Many operators are in favor of regulation as illustrated by the position taken by the Atlantic Association of Terminal Operators, but those that are should hesitate and give consideration to the ultimate result. When is control and regulation to end, not only as to your kind of business but all business? It cannot go much further without a nationalization of

erything and all of us being figured and rated by a common denominator, irrespective of our differences in industry, energy and ability.

As an association you should decide the course that should be set d that you desire to follow, and then work diligently in reaching ur objective. To be effective your efforts should be directed almost clusively to proposed or pending legislation that affects you as terinal operators more or less directly and specifically. However, you ust give attention to legislation that would set and establish a precent or principle that could thereafter be used to your detriment. ndividually you should concern yourself with all legislation that tends ward change in our form of government with its checks and balnces. One must hold steadfast and not despair to the extent of quiescing supinely to the advocacy of detrimental change. With ourage and the spirit to retain the good that we have, you and all f us can win through.

In concluding my remarks and as a summary of my personal sentiments, I take the liberty of repeating the words of the Honorable ohn A. Valls, Judge of the Forty-ninth District of Texas, expressed February of this year, "If the American continent were to sink nder the ocean tomorrow, and only a copy of the Declaration of ndependence and the Constitution were rescued from the destroying aves, coming generations from other lands would know that this nd had been the home of a glorious people who loved liberty and of brave people who knew how to defend it. The examples that have een bequeathed to you by our Revolutionary Fathers have never been improved upon, and as long as we emulate and cherish the history hat they made, as long as we glory in the inheritance of their blood, s long as we preserve the traditions of their valor in war and of their atriotism and the citadel of liberty."

Gentlemen, that concludes my so-called discussion. Legal problems re petty legal problems give us no great concern. Right usually prevails after the smoke of legal battle has blown away. If I have grown heretofore as because I have desired to impress upon you that we re not confronted with normal legal problems. This subject demands reflection and attention and with such powers as we are each endowed, we should solicit the aid and help of our friends and neighbors in a crusade to preserve and protect that which we all hold dear. (Applause.)

PRESIDENT ABEL: Thank you very much, Mr. LaRoche, for that splendid contribution and such an interesting discussion.

MR. FRED PARR (Richmond): I'd like to ask Mr. LaRoche one question. I'd like to ask him whether he believes that any great good has come from regulating the private operators, and whether or not, carrying out the spirit of the paper, that all regulation should be removed so that competition can be carried on in a fair way without restriction to one group while the other is free to do as it pleases?

MR. LaROCHE: You mean as to the possible distinction of the public terminals not being regulated and the private ones being regulated? Now, I am not in favor of that particularly except there is the argument that one governmental agency shouldn't regulate the other. I am in favor of no regulation of the wharfinger except as associations to regulate themselves.

PRESIDENT ABEL: We will now be favored by a discussion of Mr. LaRoche's paper by Clyde M. Leach, Assistant City Attorney, and Counsel of the Board of Harbor Commissioners of the City of Los Angeles. (Applause.

MR. LEACH: Mr. Chairman and gentlemen of the Association:

Legal Problems Confronting the Ports

Discussion by CLYDE M. LEACH, *Assistant City Attorney*
Board of Harbor Commissioners
City of Los Angeles
State of California

Mr. Baer has presented several important questions, which, taken together, may well be said to be a call to arms on the part of the states, not so much, perhaps, against aggression from without, but rather to preserve the inherent sovereignty itself of the people of the individual states. This may be no time or place to wave the flag, so to speak, but when we analyze the situation, and its various phases, as presented by Mr. Baer, we are brought face to face with the fact that we are dealing with government—local, state and national. We call ourselves the Pacific Coast Association of Port Authorities. The use of the term "authority" itself indicates a governing body established by law, with definite prescribed powers and duties, created for fixed purposes. The creator, in which must lie the source of the power to create, is the People. In this country we know what we mean when we say the People.

In our Declaration of Independence we find the representatives of our forefathers expressing their belief and conviction in the following language: "We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness. That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed, That whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or to abolish it, and to institute new Government, laying its foundation on such principles and organizing its powers in such form, as to them shall seem most likely to effect Safety and Happiness. Prudence, indeed, will dictate that Governments long established should not be changed for light and transient causes; and accordingly all experience hath shown, that mankind are more disposed to suffer, while evils are sufferable, than to right themselves by abolishing the forms to which they are accustomed."

Then when they have listed the reasons why they felt it their right and duty to throw off the then existing government, they sign themselves the representatives of the United State of America, in General Congress Assembled, and they solemnly publish and declare, in the name and by the authority of the good People of these Colonies, "that these United Colonies are and of Right ought to be FREE AND INDEPENDENT States, . . . and that as FREE AND INDEPENDENT STATES they have full power to levy War, conclude Peace, contract Alliances, establish Commerce, and to do all other Acts and Things which INDEPENDENT STATES may of right do. And for the support of this Declaration, with a firm reliance on the protection of Divine Providence, we mutually pledge to each other our Lives, our Fortunes, and our sacred Honor."

Their pledges they made good. They sacrificed their lives. They sacrificed their fortunes. But their honor remained sacred and unsullied, and in truth and in fact they became FREE AND INDEPENDENT STATES, for on September 17, 1787, the representatives of these original colonies or state governments adopted "The Constitution," declaring in the preamble thereof that "We the people of the United States, in order to form a more perfect Union, establish justice, insure domestic tranquillity, provide for the common defence, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this CONSTITUTION for the United States of America." It is significant to note that George Washington signed as "Deputy from Virginia," and all signers signed by virtue of their membership in Congress as representatives of free and independent states.

Notice the utter lack of reference throughout to a free and independent state or government. You can find no single thought of the surrender of the sovereignty of the respective states; but, on the contrary, there is everywhere manifest a clear intent to form a union or federation of independent sovereigns. That, I am convinced, is exactly what they did, and the states remain today as free and independent, so far as sovereignty is concerned, as the original colonies were in the beginning. Some of our public servants seem to have forgotten that fact. It may be that those who have forgotten have done so by reason of their own zeal in their attempts to solve the problems of government. Let us remember the Golden Rule, however, and be charitable; but also let us not forget that those of us who are public offi-

cials and employees are first, last and all the time public servants; and in all that we do we are but the deputies or agents through whom the people function in their public affairs and in the manifestation of their own sovereign powers of government, thus constituting what has been so truly declared to be a "government of the people, for the people, and by the people" by Abraham Lincoln, a public servant in thought and deed.

All of which brings us to some of the problems which Mr. Baer points out as confronting us, the first of which he characterizes as "The claim of the Federal Government to the ownership of our submerged tidelands." The very statement of the proposition in the language used conveys the impression of one who is a being claiming to own something which is supposed to belong to another who is also a being. When he speaks of "our" submerged tidelands he means the State's submerged tidelands, whether it be Washington, Oregon, or California, and whether it be the lawful grantee of the state, a municipality or a port district. I think we have demonstrated beyond a doubt that the state, in its broader sense, who claims to own these submerged lands and whom the United States Supreme Court has consistently said does own them, is one of the free and independent sovereign states which formed the union or federation known as the United States of America and is unquestionably a legal being, with the essence and power of government within itself. I think we have also demonstrated that this other, which Mr. Baer designates by the use of the term which is descriptive only as the "Federal Government," is not an independent legal being with the essence and power of government within itself, but is rather the creature of a being with power to create it, or, in other words, merely a means by which and through which the source of the creative power, the sovereign, expresses itself. To my way of thinking that which we call variously the, "National Government" or the "Federal Government," the "Administration," "Capitol Hill," or the "White House," are nothing more than the agencies by means of which the individual states act in those matters which are common to all and the execution and administration of which they have wisely placed in the hands of those agencies known as the Congress and the executive branch, all of which are referred to for convenience as the "Federal Government." Therefore, when we behold the tendency on the part of some Federal officials, now becoming more and more prevalent, to deal with state officials as though they represented some alien power or were but a subordinate branch of a national sovereignty, we begin to wonder if they have any conception of whom they are serving. Probably some of them think that they are "It" and not a servant of anybody or anything. I was present representing the Board of Harbor Commissioners of Los Angeles at the hearings held last March in Washington by the Legislative Committee of the House and the Public Lands Committee of the Senate on the resolutions introduced in Congress seeking to establish a claim on behalf of the Federal Government to the oil in submerged lands. The sovereignty of the states was being questioned, and you gentlemen may rest assured that it was most admirably upheld and protected, for the most part by representatives of the states directly affected. The feeling was manifest, however, that we ought to be ashamed of ourselves, and although the Governor of California and the cities and counties directly interested were well represented, and the Attorney General was there in person, backed by the entire membership from California in Congress, one of the proponents of the resolution suggested that maybe California didn't care whether she was protected during time of war or not. There's something for you to think about. Does the dog wag the tail, or the tail wag the dog?

I cannot help but feel that we, the citizens of these sovereign states, are to blame for this tendency on the part of Federal officials, more so than changing conditions and times as so many are prone to believe is the cause. The only solution I can see is the maintenance of closer contact with our representatives in Congress, both in the House and the Senate. Article I of the United States Constitution provides that the legislative powers "herein granted" shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives; and that the members comprising this legislative body shall be chosen by the People of the several states. Then follows an enumeration of the legislative powers granted by the states. Ports, the affairs of which you gentlemen administer, are one of the links in the chain of transportation whereby the people move their goods from one place to another. "The Congress shall have Power to regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes", we find in the Constitution of the United States, and what the Congress may do in the exercise of this power which the states have granted to it is of paramount interest to every port official. It is, therefore, of the utmost importance that we maintain that degree of contact and cooperation with our representatives in the Congress which will insure a mutual understanding of our port problems, many of which Mr. Baer has referred to, to the end that the members of Congress will, in truth and in fact, represent the sovereign states in those interests and activities of the states which they have in common with each other and the regulation of which they have entrusted to the Congress. The most important question in the situation is the one of common interest, and I believe, as I have suggested, that under the Constitution as it now stands our interests will be best served by close cooperation with our members in Congress.

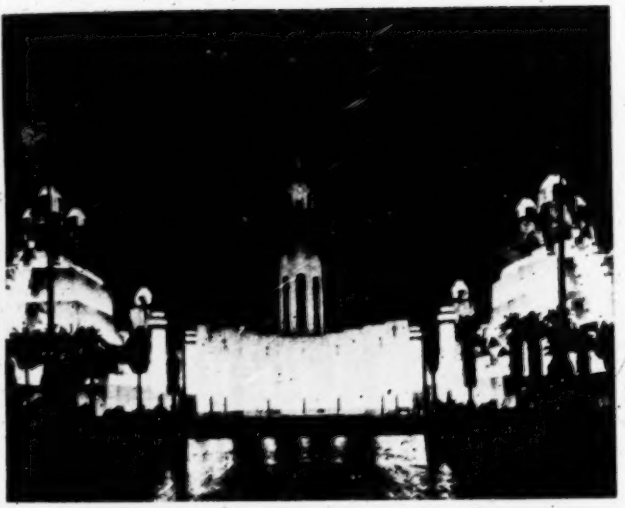
One matter in which the ports are interested is the regulation of interstate commerce handled by water carriers engaged in the intercoastal service. If the attitude of the Congress toward this particular field of transportation is indicated by the action of the Senate in adopting the Wheeler Transportation Bill, No. S. 2009, and the action of the House committee in recommending the bill proposed by its Interstate Commerce Committee as a substitute for the Wheeler Senate bill, both of which place all forms of transportation under the Interstate Commerce Commission, evidently the present members of Congress generally feel that one regulatory body is better than to have the water carriers regulated by a separate commission. It may be that the majority of port officials may feel that their interests are more closely related to those of the water carriers and that regulations should remain in the hands of a separate commission such as the Maritime Commission. The point I wish to make, however, is that if all port officials and all members of the Congress should maintain at all times that high degree of close contact and cooperation, which it is so apparent that they should, it would go a long way towards solving the problem of the manner and method of regulating the various means of transporting interstate commerce.

It must be admitted that there will always be in a country such as ours, with its diversified geography and commercial and agricultural interests, differences of opinions, but if our union of states is to survive and fulfill the purpose for which it was formed selfish and local interests must give way to the general welfare and good if they cannot be taken care of without affecting the general welfare. Some may agree that Coordinator Eastman's proposal to regulate public wharfingers may be a good solution to some of our problems, while others would bitterly oppose such a proposition. Where, however, would be a better place to reconcile such differences and bring harmony out of discord, than to work out such problems in the manner suggested? The election of good men to the Congress, of course, is essential, and I feel in that regard that the ports can lend their aid and assistance by keeping the public well advised as to their problems and needs. If a public official can convince the people that his sole aim and purpose is to be as good a servant as it is possible for him to be, he can always be assured of a receptive and attentive attitude on the part of the people when he comes to them for help in solving his official problems.

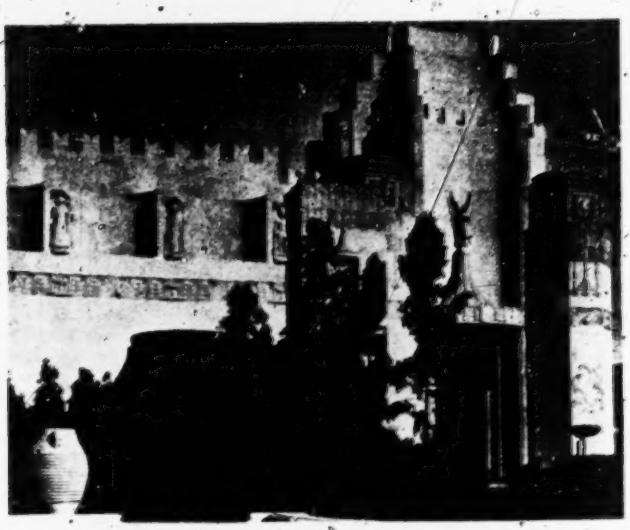
Close cooperation with the Congress would also result in the framing of legislation affecting ports in language so clear in meaning as to leave no doubt as to its intent and purposes, and do away with much of the present practice of running to the courts for interpretations and judge-made laws.

In conclusion I may I refer to one of Mr. Baer's statements in which he says that it is not a question as to what Congress may in fact do which concerns us, but the power which it is seeking to acquire, and in support of his proposition he states that Congress has enacted recent laws which provide for the assessing of taxes for social security, for unemployment relief, for the activities of the National Labor Relations Board, and for other details of government, as a phase of the power granted to it under the commerce clause of the Constitution. May not these enactments rather have been the outgrowth of the efforts put forth by a mere handful of officials to effect a new theory of government, whereby the executive and administrative branch suggests or originates legislation for the Congress to adopt instead of legislation originating in the minds of the representatives of the sovereign states assembled in Congress as a result of the demands of the people throughout the nation to meet a common need. It may be the kind of cooperation with our representatives, which we have been discussing, and the assistance and backing, to which they are entitled and should have, will shift the origination of legislation to the place where the framers of the Constitution had an idea it belonged; and

1935



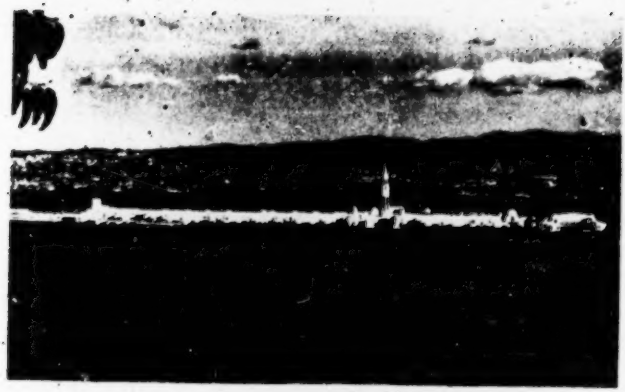
Treasure Island Nocturne. The main entrance to the Golden Gate International Exposition.



Camera Study in the Court of the Moon.

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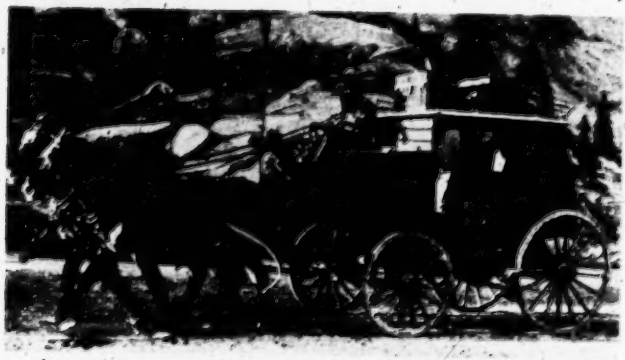
1936



Treasure Island basking in California's summer sun.



Pacifica, Goddess of the Pacific Pageant, stands majestic before a Buddhist prayer curtain whose tinkling bells denote that the supplicants' prayers have been heard.



This original Wells Fargo coach took part in the thrilling Cavalcade of the Golden West.

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a consequence it may also be that we will hear no more of "must" legislation. Let us elect good men to Congress, get behind them and stay with them. (Applause.)

PRESIDENT ABEL: Thank you very much, Mr. Leach, for that fine discussion.

The Resolutions Committee is now in session. The Chairman of that committee, Mr. Smith Wilson, requested me to announce that if you have any resolutions, to please get them to him right away. You will find the committee in the lobby.

The next paper is Paper No. 11, "Federal Tideland Legislation," by Mr. I. M. Stevens. (Applause.)

MR. STEVENS: Mr. Chairman and gentlemen of the Convention:

Federal Tideland Legislation

By IRWIN M. STEVENS, *President*
Board of Harbor Commissioners
Long Beach, California

It gives me great pleasure to have this opportunity to discuss with you the subject of Federal tideland legislation, and to point out some of the results which must inevitably come from certain measures now pending in Congress. The recent discovery of valuable offshore oil deposits in California, Texas and Louisiana has inspired proposed federal legislation which if ever enacted will jeopardize public titles to waterfront lands throughout the country.

In 1937 what has proved to be the most productive oil deposit in California was found at Long Beach Harbor. The richest part of this field is located under the ocean upon lands owned by the City of Long Beach. Shortly after the discovery of oil, many private individuals filed applications for prospecting permits under the Federal Leasing Act, hoping in that way to secure oil rights in city lands merely by paying a five per cent royalty to the Federal Government. The Department of the Interior, however, denied such applications upon the ground that the Federal Government did not own or claim to own such oil lands. This, however, did not deter the applicants. They proceeded to have measures introduced in Congress whereby the Federal Government would make the claims necessary to permit the Department of the Interior to issue prospecting permits, and to force the United States Attorney General to litigate those claims in the courts.

Accordingly, in August of 1937, Senator Nye of North Dakota introduced a joint resolution in the Senate whereby the Federal Government asserted title to all oil deposits along the coast of the entire United States between low-water mark and the three-mile limit. The Nye resolution peremptorily directed the Attorney General of the United States to commence and prosecute litigation designed to assert and establish the claim thus made and to remove all persons from such lands.

The true significance of this measure was not at once observed. It was passed by the Senate and referred to the House of Representatives, and then came to the attention of those charged with the duty of safeguarding our harbors. They promptly saw that if the Federal Government could claim waterfront oil lands, a similar claim might be made to any other tidelands. Port authorities in all sections of the country banded themselves together and opposed the Nye Resolution. At the hearings held before the House Judiciary Committee in February of last year, Louisiana and Texas, having similar undersea oil deposits registered vigorous protest. Representatives of the Atlantic, Gulf and Pacific ports testified before the committee and pointed out the danger to our water-borne commerce necessarily created by such ill-advised legislation.

The proponents of the Nye Resolution were equally active and after the committee hearings were completed, Representative Hobbs of Alabama proposed an amendment reducating the application of the Nye Resolution to California lands. Apparently it was hoped that this move would placate the opposition developed outside of California. So amended, the resolution was passed by the House Judiciary Committee by the close vote of 8 to 10. Before the amended resolution could be acted upon by the Senate, the 75th Congress adjourned.

Promptly upon the convening of the present Congress, Senator Nye again introduced his resolution in its original form. The opposition became more militant than ever. He then introduced the resolution with the Hobbs amendment, making it applicable only to California. Similar resolutions were introduced in the House of Representatives. In March of this year, hearings were held by committees of both houses of Congress and all phases of the matter were carefully explored. Again the measures were fought, not only by those interested in the oil question, but by the port authorities of almost every city in the country having a deep-water harbor. By reason of this concerted opposition, the Nye Resolution appears to have been defeated in committee, temporarily at least. Its dangers are so great, however, that we must remain constantly on guard.

Before discussing the effect the Nye Resolution will have upon our harbors, the arguments advanced in support of it should be examined. At first blush, many of them seem plausible. In general, they fall into two classes. One set of arguments is based upon the assertion that under the law, the Federal Government is the owner of all lands between low-water mark and the three-mile limit. The other arguments proceed upon the theory that the Federal Government has the right to take and refuse to pay for subsea oil deposits regardless of who may own them.

Some of the proponents of the Nye Resolution claim that our oil reserves are being constantly depleted and that in the near future our supply of oil available for naval operations will be exceedingly limited. This argument, of course, overlooks the well-established fact that our known oil reserves, instead of decreasing, are rapidly increasing. New oil deposits are being discovered at a rate far greater than our oil consumption. Our known reserves today are nearly twice as great as they were a few years ago. We are, in fact, struggling with the problem of overproduction. Many who have given the matter careful study assert that the danger of exhaustion of our oil reserves is remote indeed. New methods are being developed for the extraction of greater quantities of gasoline from a given amount of oil. Our chemists have worked out processes for the manufacture of synthetic gasoline, and it is probable that within a few years we will not be entirely dependent upon natural petroleum for either our naval or civilian fuel supply. It appears, therefore, that the claimed necessity for conservation of oil is exaggerated.

However, even if it be assumed that conservation of oil resources is immediately required, will the Nye Resolution accomplish this purpose? So far as the Long Beach Harbor oil field is concerned it will not and cannot. As everyone familiar with the oil business knows, oil is fugacious. It does not remain in one spot. A single well will drain oil from an entire ten-acre parcel of land. In the Wilmington-Long Beach Harbor field more than 600 wells have been drilled. Each of these wells drains oil for a distance of at least 500 feet in every direction, and without regard to property or tide lines. At Long Beach harbor, wells have been drilled on the beach and are draining oil from under the ocean. The field has been opened and the oil in the ground cannot be conserved for future use unless almost every well in the field is shut down, including those drilled upon privately owned uplands. If the private upland wells are not shut down they will drain the oil now under the ocean. The only way the public can gain any benefit whatever from this great undersea deposit is by the drilling of public wells, which is the antithesis of non-production.

The proponents of the Nye Resolution, however, have, in fact, no intention of conserving oil. Many of them have applied for permits under the Federal Leasing Act, by means of which they expect to drill these very lands upon the payment of as little as 5 per cent of the oil to the public. At the hearings held before the House Judiciary Committee in February of 1938, their lobbyist blandly asked the committee to fix the resolution in such a manner as to permit the Department of the Interior to grant drilling permits to them. Is it not at once apparent that the conservation argument is counterfeit?

I willingly concede that in case of military necessity the Federal Government has the right to take possession of any oil field in the entire United States, regardless of who owns it. Under that power it could take over the Long Beach Harbor field and, if the necessity existed, the Navy would be welcome to every drop of oil in that great deposit. Such necessity does not now exist, however. We are at peace. And under such circumstances the Navy has no more rights to confiscate oil in Long Beach than it has in Kettleman Hills or in Pennsylvania. It probably has the right to condemn such deposits

even in time of peace, but it must pay their reasonable value. The supporters of the Nye Resolution, however, do not intend that the Federal Government shall pay for these undersea oil deposits, and appear to be willing to disregard our constitutional provisions forbidding the taking of property without due process of law or payment of full compensation. If Long Beach can be required to fuel the Navy without compensation, why cannot the steel mills of Pennsylvania be required to build its guns gratis? This, I believe, is a sufficient answer to the argument that the Federal Government has the right to take, without regard to ownership, any part of the Long Beach oil field or any other.

The contention that the Federal Government owns the lands between low-water mark and the three-mile limit presents a more serious question. The advocates of the Nye Resolution freely admit that the several states are the owners of the tidelands within their borders. This has been determined by our appellate courts in hundreds of cases throughout our history. However, in order to give apparent substance to their claim, the supporters of the Nye Resolution draw a hair-line distinction between "tidelands" and "submerged lands." They say that the term "tidelands" includes only that narrow strip of land between high-water and low-water marks, and does not embrace any land below low-water mark. They point out that in practically every important case in which the United States Supreme Court was called upon to adjudicate waterfront titles it used the term "tidelands" and has never rendered any important decision in which it in so many words held that the states are the owners of their "submerged lands." Though the argument is technical in the extreme, it is surrounded by an aura of plausibility. However, when we dig into the facts of the various cases which have been decided by the Supreme Court, we find that many of them actually involved lands located below the line of low tide. This clearly demonstrates that the court understood the word "tidelands" to include everything from the high tide line to the three-mile limit, and that it has never found it advisable to distinguish between tidelands and submerged lands, or to apply different principles of law to either of them.

The proponents of the Nye Resolution say that they desire merely to have an adjudication by the court upon this microscopic point of law. Sanctimoniously they argue that none of the states should object to having their titles passed upon by the courts. This argument, until analyzed, appears to be reasonable. If the states really own the lands below low-water mark the court will so decide, and no state should fear the result. That, however, is not the whole story by any means. Though we seldom stop to think of it, one of the cornerstones of our prosperity is the security and certainty of land titles. This is particularly true with harbor frontage. The cost of making harbor improvements runs into staggering sums. Much of the money necessary for construction of terminal facilities must be raised by the issuing of municipal and other bonds. No such improvements can be made with any degree of safety unless the title to the lands upon which they are built is clear. No city has the power to build wharves or other facilities upon lands which it does not own, and city money should not be spent for improving Federal lands. Any cloud upon any city's title to its waterfront lands must, therefore, of necessity impair if not destroy its ability to make harbor improvements. Our whole harbor construction program can be brought to a standstill by a serious threat upon the title to harbor land. For this reason alone, litigation over the title to such land should never be commenced unless vital questions are involved and the matter cannot be settled in any other way.

The adoption of the Nye Resolution will inevitably create a serious cloud upon all harbor lands in every seaport in the United States. Harbor construction will be effectively retarded until the courts have finally disposed of the controversy. It is, therefore, at once apparent that the states have much to fear from needless litigation of their titles. Even if the states are ultimately successful, their construction programs will be seriously impeded. Projects which will create much present employment or labor will be indefinitely delayed while the lawyers argue and the courts ponder.

In view of this, is there any real need for a court decision on the question raised by the Nye Resolution? Is the question acute enough to justify such a great and certain loss to our people? As I pointed out a few moments ago, the Supreme Court of the United States has unanimously held that the several states are the owners of the tidelands within their borders, and that such decisions have been rendered in cases which actually involved what the proponents of the Nye Resolution are pleased to call "submerged lands." That august tribunal has never seen fit to apply any different principles of law to submerged lands than to tidelands, and there is no reason to believe it will now do so. Many eminent lawyers have expressed the opinion that the distinction between "tidelands" and "submerged lands" is without foundation in law. So far as court decisions are concerned, the supporters of the Nye Resolution have little or nothing upon which to rely. They claim merely that the court has in the past failed to decide the question which they have created, though they must admit that the principles necessarily involved have been adjudicated times without number. And what will happen if no court ever passes on the question raised by the Nye Resolution? Our cities and states can and will continue to build and improve our harbors without interference by the Federal Government. Improvement projects will continue employing, as they will, thousands of men and consuming enormous quantities of materials. Of course, the small group of private individuals who seek prospecting permits upon valuable tidelands or water oil deposits will have to look elsewhere for great wealth.

But the question raised by the Nye Resolution has been decided by others than the courts. More than forty years ago Congress confirmed state ownership of submerged lands. During the early days of San Francisco the case of Knight vs. United Land Association was decided by the Supreme Court of the United States. In that case the court ruled that under the treaty which ended the Mexican War the United States acquired all tidelands in the conquered territory to be held them in trust for the future states which might be created out of that area. Years later, in the act providing for the government of Alaska, Congress adopted almost the precise words used by the court in the Knight case and affirmatively declared that the United States held all lands below low-water mark in trust for any future state which might be erected out of Alaska. That act is still on the statute books. By it Congress has unequivocally recognized the ownership by the states of all lands within their borders below low tide, because all states have equal rights.

But this is not an isolated instance. Time after time since the beginning of our history the Federal Government has asked and received from the various states grants of tidelands and submerged lands to be used for the construction of navy yards, arsenals and other Federal projects. In California alone, several such grants to the Federal Government have been made by the state and various cities. Certainly, if the Federal Government claimed ownership of these lands it would not have asked for grants from any state or any city.

In addition to the activity of Congress upon this question, the activities of other governmental agencies is highly significant. The Department of the Interior has refused to issue prospecting permits for submerged lands on the ground that the Federal Government does not own them. That is one of the primary reasons for the introduction of the Nye Resolution.

In all of our history the Attorney General has never been asked to recover from any of the states or cities of our nation any land below low-water mark. This cannot be attributed to ignorance of business, because we have had many able, industrious and conscientious Attorneys General. None of them has ever, so far as I am aware, questioned the title of the several states to such lands. Indeed, though there have been three long hearings held by Congressional committees upon this subject during the last two years, no member of the Attorney General's staff has so much as expressed the opinion that the Federal Government is the owner of submerged lands. At the hearings held in February of 1938 a representative of the Attorney General's office refused to give an opinion on the question, and stated that the office was investigating the matter. At the two hearings held in March of this year, one by the Senate and the other by the House of Representatives, no member of the Attorney General's staff was present as a witness. Can it be that the advocates of the Nye Resolution do not value the opinion of the Attorney General of the United States? Or do they fear that his opinion would be adverse? Another significant fact is that these resolutions do not merely authorize the Attorney General to commence litigation with the states and the courts if he finds that ground for such proceedings exists. He is positively *ordered* to begin such suits regardless of what his opinion as to the merits may be. One of the lame arguments advanced in support of the resolution is that it will permit the Attorney General to act. This argument fell flat when it was pointed out that the Attorney General not only had the right but was under a duty to sue if the Federal Government has a legitimate claim.

The claim of title by the United States, therefore, seems to be utterly unfounded. None of our courts have ever decided that the Federal Government owns the submerged lands, and have repeat-

countless decisions clearly indicating the contrary to be true. Congress itself has confirmed the states' claim of ownership. The acts of the Attorney General and the Department of the Interior demonstrate clearly that until the advent of the Nye Resolution no doubt existed as to the title of the several states to the submerged lands within their boundaries. Though I am not a lawyer, these arguments seem conclusive.

In addition to being legally defective, the Nye Resolution is obnoxious in principle. May I digress just a moment to say that the delay caused by the Nye Resolution has cost the loss of over a million one hundred thousand dollars to the city, who represented the people, while awaiting the resolution in Congress and waiting to beat the Nye Resolution in Congress last March. Private owners took that matter out of diversity into their own keeps. It ignores the fact that our Federal, State and City governments are all servants of the people who ordered them. It is an attempt to create what really amounts to a governmental civil war. By this resolution, the Attorney General of the United States, a servant of the people, is ordered to commence litigation with states and cities, other public agencies. Such cases must be decided by other attorneys hired at public expense. It is as if one of your truck drivers should pick a fight with another of your drivers in order to get possession of your truck, so that your goods might be delivered. In the battle both will be hurt, you will pay their medical bills, and their Workmen's Compensation, and your goods will not be delivered at all. No private business would tolerate any such misguided efforts on the part of its employees. In principle, the Nye Resolution is equally as ridiculous as such a truck drivers' quarrel would be.

Such intergovernmental strife can be ugly to the public. In Long Beach we were forced to submit to just such a situation and it resulted in substantial loss to both public bodies involved. In 1911 the State of California granted to the City of Long Beach all tidelands within its borders. Shortly after the discovery of oil in the harbor field, the State of California, relying upon a highly technical construction of the 1911 grant, claimed ownership of the city's tideland oil deposits. Inspired by the state's claim, a taxpayer commenced an action against the city and secured an injunction stopping operations upon four city wells then being drilled in the heart of the field. The controversy was ultimately decided in favor of the city by the Federal Supreme Court. The case was handled with extraordinary rapidity, but in the brief time required for the decision, typically rich wells drained large quantities of oil from city lands. It has been estimated that this taxpayer's suit cost the city, one branch of the public in the neighborhood of fifty thousand dollars, unless we give the state credit for claim ownership of lands which it had previously granted to the city. This great public loss was wholly unnecessary and might easily have been prevented had the state been willing to disclaim the city's lands.

The same thing can happen if the Nye Resolution is ever adopted. In fact, a suit is now pending in Long Beach in which a private litigant is suing the city on the theory of federal ownership of tidelands. If, however, there is any substantial question as to the ownership of submerged lands, the public interest demands that it be settled [illegible] in the courts. In my humble opinion it is the duty of the Federal Government to abandon whatever claims it may have to the submerged lands within the borders of any of the states. I say this not because of any connection with state government, but because of a sincere conviction that the public interest will be best served by state and municipal ownership of waterfront lands.

My reasons for this position are obvious. It is considered by all concerned that the states and their grantees are the owners of that portion of submerged lands between high tide and low tide. This is not disputed. To construct harbor works necessary to the development of [illegible] as well as tidelands. Wharves must be built from the upland to deep water if a harbor is to accommodate vessels larger than a canoe. A large share of all harbor improvements are constructed upon lands lying below low tide. If the Federal Government owns below, and the state owns above the low tide line, divided ownership of all harbor facilities will result. Before any improvement can be made it will be necessary for the Local and Federal governments to co-operate not only in locating the line of demarcation, but in the agreeing and sharing of revenue. It is not inviable that under such circumstances the two governments will work at cross purposes, with the result that the public will suffer. Such a condition would be intolerable. It is, however, a necessary result of divided ownership of the terminal facilities.

It has been reliably reported that no less than three and one-half billion dollars have been invested in harbor and marine terminal facilities by municipalities and other public port districts. Much of this enormous sum was raised by the issuance of bonds. If the Federal Government establishes ownership of all lands below low tide, the security and value of these bonds will be greatly impaired. Money for further needed harbor improvements could never be raised by the issuance of bonds.

For these reasons it is my opinion that this organization should fight the Nye Resolution with every weapon at its command. In addition, as soon as possible, measures should be enacted by Congress whereby the Federal Government will release to the several states any possible claim of ownership which it may have to all tidelands and submerged lands within the boundaries of the several states. In this way, costly and unnecessary litigation can be avoided and the public will be spared the damage which the uncertain title to such lands will be found to cause.

Thank you, Captain.

PRESIDENT ABEL: Thank you very much, Mr. Stevens, for the informative paper.

We have a discussion of this paper by George Nicholson, Consulting Engineer of Los Angeles.

MR. NICHOLSON: Mr. Chairman and members of the Association:

The subject has been well covered this morning, and I am very glad it has, because it is a very important problem so far as Port Authorities are concerned. My paper is brief, however, so it will take little time to read it. I might say that a year ago the American Association of Port Authorities appointed a special committee. At that time Mr. Cohn, chairman of the Law and Legislative Committee of the American Association, recommended the appointment of three from his committee and two engineers from the Port Department and Construction Committee, and I happened to be the Pacific Coast representative on that committee, so I presume that is the reason Mr. Abel asked me to present that discussion.

Federal Tideland Legislation

Discussion by George T. Nicholson, Consulting Engineer, Los Angeles, California

Mr. Irwin M. Stevens has given a very [illegible] paper on this subject and has [illegible] the danger to the [illegible] Port [illegible] would be lost to them [illegible] this country.

[illegible]

[illegible]

[illegible]

strued as a taking, as authorizing a taking, or as ratifying a taking, of any property by exercise of the power of eminent domain, *nor shall this joint resolution* nor anything herein contained, nor any inference or deduction which may be drawn herefrom or from any part hereof, *be construed as releasing, waiving, abandoning, disclaiming, or affecting in any way whatsoever any right, title, claim, or interest which the United States of America has or would otherwise have to other petroleum deposits and submerged lands or the right to set aside other petroleum deposits and submerged lands elsewhere for naval petroleum reserves or for other purposes.*"

I think you will agree with me that that language is very broad, and at the second hearing we had in March of this year, we hammered on this Section Three. The representatives of the other states, Florida, Texas, and a number of the other coastal states, took the same view we did.

Mr. Stevens has referred to the proponents of this legislation as being the applicants for federal oil and gas leases on the California coast. It is true that a number of the 111 individuals and their attorneys who have made 130 applications for federal prospecting permits and oil and gas leases on tidal and submerged lands have interested themselves in this legislation, but the chief proponent has been the U. S. Navy. At the recent Congressional hearings the case of the proponents' resolutions was presented almost entirely by Congressman Hobbs of Alabama and the U. S. Navy representatives. The Navy desires to establish additional naval oil reserves, and if this were done then the applicants for oil and gas leases would, of course, not be granted leases, and they would receive no benefit from the legislation.

We have no quarrel with the United States Navy, as far as expanding their naval reserves is concerned, but our contention is that the petroleum deposits in our tidelands is so small a per cent as compared to the known petroleum deposits in the whole country that they should be responsible for expanding the tidelands to the interior.

At the recent Washington hearings the question was asked by several of the opponents of the resolutions who was not the Attorney General's office represented to give the Government's views on the legality of the Government ownership of submerged lands? This was well answered by the Navy representatives at the hearings in their statement that the Attorney General did not at present have the authority to acquire title to the submerged lands without a legislative declaration by Congress on the basis of the need of petroleum reserves for national defense. They conceded that a court decision supporting the Congressional declaration would have to be more political than legal. Therefore you can see the danger resulting from the passage of any of these resolutions.

At the recent hearing before the Senate Committee on Public Lands and Surveys the following interchange between Senator Johnson and Senior Attorney Mr. Nemar of the office of the Judge Advocate General of the U. S. Navy took place and can be found on page 422 of the official transcript:

"Senator Johnson of California—You hold, therefore, that you have the right to go into all the ports and take all the ports' property or all the property that has been constructed thereon and therein, just the same as you have to take the oil in this particular case?"

"Mr. McNemar—Of course, that would necessarily follow, I think, from these citations of authority; but that is not what is being contended for in the resolution."

"Senator Johnson of California—That is what you contend is the law?"

"Mr. McNemar—Oh, yes. I cannot change that."

"Senator Johnson of California—But with the reasons as stated, or any of them, you could, without due and just compensation, take all of the port facilities?"

"Mr. McNemar—If all the port facilities were below high water mark, I take it that that probably would be true."

Nothing could more definitely show the danger to all ports of the trend of thought advanced by the Navy in the above statements.

The Law and Legislation Committee of the American Association of Port Authorities, which has carefully considered the legal question, contends the Federal Government has no right or title to tidelands or submerged lands or to petroleum or other mineral deposits forming part thereof. Title to such lands up at least the three-mile limit, and in some cases to a greater distance, is in the states or their grantees or the grantees of their predecessor sovereigns. It is also the opinion of the committee that it is impossible for the Federal Government to argue that it has, a paramount right to take petroleum from submarine deposits (without just compensation) without arguing that it has title to all lands under water.

Therefore, if the Government program were successful, it would mean we would lose our submerged lands as well as the public and private facilities constructed thereon. It has been estimated that the valuation of the latter facilities, not considering the value of the land, in the United States is approximately $1,775,000,000.

You gentlemen know the public ports' ownership and control in most cases, is a small fringe around the waterfront, and most have build on reclaimed and submerged lands.

Mr. Stevens, in his paper, has referred to the definition or meaning of tidelands, and states in his opinion tidelands also include submerged lands, and refers to the fact the numerous court decisions of California and other states have continually referred to submerged lands as tidelands. I believe Mr. Stevens is perfectly correct in his interpretation of the word tidelands. At the recent Washington hearings the Navy attorneys attempted to draw a fine line of distinction between the area exposed at varying stages of the tide and submerged lands, claiming that ownership in the former was in the states and the latter in the Federal Government. One of the members of the House Judiciary Committee requested me to submit a definition of tidelands which is quoted below, and I believe it describes this land in an engineering and practical way and coincides with the opinion of Mr. Stevens as expressed in his paper:

"Tidelands are lands located seaward of the mean high water line, a portion of which—between mean high water and mean low water—are exposed at varying stages of the tide while the remainder, below low water, are always under water subject to the tidal action and commonly known as submerged lands."

In the last paragraph of Mr. Stevens' paper, the following recommendation is made:

"Measures should be enacted by Congress whereby the Federal Government will release to the several states every possible claim of ownership which it may have to all tidelands and submerged lands."

Personally, I believe this inadvisable because we recognize no claim of the Federal Government at present, real or implied, and consider no such claim has ever existed. A quit claim action, as you suggest, would prejudice the title of the present owners—the states, municipalities and port districts.

Regarding the present status of this legislation, the Subcommittee of the House Judiciary Committee, which held the hearings on the subject in March, has submitted a unanimous report to the main committee opposing the resolution. The Senate Committee on Lands and Surveys have not acted as yet, but we are hopeful that they will not submit an adverse report before the session ends. We believe that there is no likelihood of any favorable action supporting the resolution at this session of Congress. However, it is possible the matter may be continued for consideration at the next session, since the resolutions do not die at the end of the present session.

This is prior to the adjournment of Congress, and the present status of the United States Senate Committee has given consideration to the matter, but it is still on the docket, and they have made no recommendation.

The Special Committee appointed by the American Association of Port Authorities will continue to work with all of the public port authorities, private terminal operators and related industries to assist in opposing this Federal legislation, but it behooves all of our port activities to be on the alert in opposing such resolutions that have been introduced in the past or may be introduced in the future on this subject.

Thank you. (Applause.)

PRESIDENT ABEL: Thank you very much, Mr. Nicholson for your fine discussion. Is there any further discussion on this subject? If not, we will proceed to the next paper, Paper No. 12, "Handling Forest Products at Marine Terminals," by Mr. W. J. Murphy, Manager of the Port of Grays Harbor, Washington. (Applause.)

MR. MURPHY: Mr. President and gentlemen:

Handling Forest Products at Marine Terminals*

By W. J. MURPHY, *Manager and Engineer*
Port of Grays Harbor
Grays Harbor, Washington

Lumber, shingles, logs, plywood and other forest products make up a large percentage of the cargo shipped from ports of Oregon and Washington. Considerable progress has been made in the manner of handling these commodities, and a brief outline of these methods is my subject for discussion.

Grays Harbor is primarily a lumber port. It has been my privilege to discuss with men engaged in the manufacture and shipping of lumber from this port their experiences during the past thirty years, when they have shipped on 15,000 vessels in excess of 17,000,000,000 feet of lumber to the markets of the world. The Ports of Tacoma, Olympia, Port Angeles, Willapa Harbor, Coos Bay and some Columbia River ports that maintain public terminals have been in the past and still are dependent upon lumber and other forest products for their principal revenue.

Men engaged in the stevedoring business recall when it took thirty days to load a vessel carrying a million feet board measure of lumber. While today modern carriers will take aboard a cargo of four million feet in a week or ten days, and it is not unusual to have three of these vessels loading at one terminal at the same time. Naturally the movement of lumber to ship's tackle had to be speeded up to keep pace with this progress in loading.

Lumber mills first sprung up along the navigable waters, and each mill had its own wharf. Later, as the timber line receded, mills followed and located where they could enjoy rail business and still be close enough to the water to compete in world markets. The development of inland mills is largely responsible for the building of many public terminals in the Pacific Northwest, because private operators were not equipped to handle the volume of business offered.

Old-time sawmills had no sorting chain. All lumber came off of the drop at one end and was placed on two-wheel carts carrying about 500 feet board measure. These carts were pushed to the edge of the wharf and unloaded by hand into huge piles awaiting the arrival of a vessel. When the vessel arrived the lumber was pushed over the rail by hand. It was inspected and tallied as it cleared the rail. Later, when sorting chains were installed and the lumber was segregated into different sizes, it was placed on two-wheel buggies holding about 1,000 feet board measure and was drawn to the edge of the wharf by one horse. With the introduction of gas tractors the same carts were used, but instead of a horse, a jitney was used to pull the load to shipside. Today a modern mill will take its sorted lumber from the chains and place it directly on carrier blocks, regardless of whether it is going to move by rail, by water or be transported to the back area for storage. Modern cranes with high-piling capacity are used in the back area for picking up carrier loads and placing them in storage awaiting shipment. This conserves space, and it is cheaper to rehandle than to provide a large area where the lumber can be left on blocks.

Lumber carriers referred to are the straddle type truck, which are built for load sizes ranging up to seven feet wide by seven feet high with load capacities up to eighteen tons. They are self-loading and self-unloading, will pick up or deposit a load in two to five seconds; have speeds up to fifty miles per hour forward or reverse; they are built with either four or six wheels, and are equipped with pneumatic tires. The size adopted as standard around the terminals and mills of the Northwest, carry a load 42 inches wide which averages around 3,000 feet board measure. Lift trucks especially designed for handling lumber are fast becoming popular. They are used largely in connection with plants equipped with carriers. They can be used to good advantage in high piling, loading or unloading cars or trucks, and one operator does the job which would require at least two men with a crane.

While waterfront mills and those located close enough to a terminal to avail themselves of carrier service, deliver their cargo to shipside in package lots, most inland mills deliver their lumber on open flat cars or by motor trucks. Where the car moves directly to ship's tackle the unloading problem is shifted from the terminal operator to the stevedore, but if it is to be unloaded into storage, then the terminal has the grief of unweaving a poorly loaded car, and it is for this reason that cost plus is the only fair way of assessing handling charges. Motor trucks that must have their loads lifted off are a nuisance at best. They usually arrive when the cranes are busy serving a vessel or doing some other work, and no one can afford to pay the full amount this service is worth. It is my opinion that any terminal that unloads lumber from motor trucks with a crane will lose money on the operation, because they cannot be compensated for the broken time of a crane crew. The new type lift truck is a good machine for unloading trucks; it will do the work cheaper and easier than a crane, and if there is plenty of space available its load need not be repiled.

From 1923 to 1929 most lumber terminals were so congested that only a part of the cargo could be unloaded on the wharf, the rest was piled in the back area, and when the vessel lifting this cargo arrived, it was reloaded to flat cars for direct transfer. This method is still employed in some places, but the more economical method, if space is available, is to unload it from car to carrier blocks, and then when the vessel arrives deliver it direct to shipside by carrier. This saves one handling.

Where lumber is piled on a wharf that is equipped with cranes the usual method is to take the lumber direct from pile to shipside in one operation, but if the storage pile is 500 feet or more from the vessel it is quicker and more economical to load it on carrier blocks and let the carrier do the traveling rather than move a big crane back and forth with each sling load.

A public terminal that specializes in the handling of forest products must be prepared to handle both green and dry lumber. Dry lumber that arrives by box car must be man handled, and there is no method yet devised which beats this. There are some mills, especially those that cut export spruce, which ship air-dried lumber on flat cars covered with tarpaulins. This can be unloaded by crane outside if the weather is dry and brought into the shed by carrier, but if an inside unloading track is provided and a bridge crane is installed overhead the cheapest and best service can be given the customer.

Many of the lumber terminals in the Northwest receive a large part of their lumber and log cargo in rafts or on scows for direct overside loading. This, of course, does not require any handling by the terminal —the vessels merely occupy a berth.

One of the difficulties that a lumber terminal operator experiences is getting equipment to take care of peak business and still have some use for this equipment when it is not required for serving vessels. In order to overcome this condition, at least in part, many of the smaller ports have developed a log-loading and unloading business which has no connection with vessel movement and consequently is a good fill-in job. At Grays Harbor it has been this incidental business that has kept us going during the slack periods in the lumber business. At present we average around 600 cars of logs per month which are unloaded from gondola cars to the water and we load-out about 70 cars of logs per month. This keeps two cranes busy most of the time and still leaves them free for ship's business when required. In most lumber districts transfer companies are equipping themselves with modern lumber carriers which can be rented for $2.50 per hour, with a driver; this is as cheap as owning them, and calls for no capital investment.

This subject of handling lumber could be discussed indefinitely, but since time is limited I will move on to other forest products.

Shingles move in large quantities from many of the Northwest ports. The methods of transporting them from place of rest on the wharf to shipside vary the same as handling general cargo commodities, but due to the restricted size of load by the longshoremen and the insistence that a definite size gang be employed for each gear, it does not really make much difference what method is employed—the cost is about the same. Without restrictions the lift truck is perhaps the most economical method of handling shingles, but as long as it takes six dock men and a jitney driver to each gear, with loads limited to thirty bundles and the average speed of loading pegged at 600 bundles per hour per gang, any equipment that delivers to shipside twenty loads per hour is good enough.

While plywood is a forest product, it really is a manufactured article which is handled the same as general cargo. Plywood for domestic shipment is usually loose, while export is in bundles. It arrives at the terminal either by truck or by box car. When arriving by truck it is unloaded onto the floor of the terminal and rehandled by longshoremen to lift boards or direct to flat-top trucks for transportation to shipside. When arriving by rail it is usually unloaded direct to lift boards and stacked up awaiting arrival of vessel. Olympia and Tacoma handle more plywood than other Northwest ports, and their method of handling is as above outlined. At Grays Harbor the plywood is unloaded from cars, taken into the shed on flat-top trucks and piled up with a bridge crane. When serving a vessel the crane and four

men can load flat-top trucks for as many as five gears, but the same gang is required for loading one gear. This method is employed simply because we have a bridge crane and do not have lift trucks, but if sufficient business were offered we would use lift trucks in preference to the crane, slings and flat-top trailers.

In conclusion, an ideal lumber-shipping terminal, from my observation, should have double shipside tracks for direct transfer. These tracks should have frequent crossovers so the switching of one vessel would not interfere with others. The open wharf should have two high piling cranes of the hammer-head type, with booms 100 feet long that extend 50 feet over the side of wharf to place cargo in deck of a vessel or unload scows. The terminal should have a high shed with depressed rail tracks through it and a bridge crane overhead; a locomotive for switching is essential; lift trucks are desirable and lumber carriers are almost indispensable. The terminal should be located on slack water with at least 500 feet of unobstructed space on the offshore side of the vessels for loading from rafts and scows and to permit easy berthing.

"Lumber is a bulky commodity. Its value is not particularly great, and it must be handled cheaply and efficiently. Modern equipment at a terminal is a necessity and a luxury. (Applause.)"

PRESIDENT ABEL: Thank you Mr. Murphy. I was a little late in assigning the discussion of Mr. Murphy's paper. I did assign it to Mr. MacComber, Manager of the Port of Vancouver, but due to the lateness of the assignment, there was not sufficient time to prepare a discussion, and we will forego the discussion by him. However, if there is any discussion from the floor, we would like to have it at this time.

For the benefit of all present, I would like to state that the Port of Oakland has what we feel is a very efficient lumber terminal—the Ninth Avenue Terminal. If any of you gentlemen are interested in the handling of lumber, and would like to visit the terminal, I would be very happy to arrange for a visit. You can sign up at the desk, and we will see that you are accommodated.

The next paper is Paper No. 13, "International Fisheries Law Applied to Alaskan Waters," by Mr. J. A. Farley, President of the Port of Seattle. (Applause.)

MR. FARLEY: Mr. President and gentlemen of the Convention:

International Fisheries Law Applied to Alaskan Waters

By J. A. Farley, *President*
Seattle Port Commission
Seattle, Washington

No American citizen, much less those affiliated with port work and the far reaching economic functions of maritime commerce, can fail to be concerned over the seriousness of the situation affecting the Pacific fisheries industries. Consequently, we are immediately interested in the International Fisheries Law and the interpretation, application and enforcement of all present or future laws that may appear necessary for the protection of American rights in Pacific fisheries, and thus the preservation of hundreds of millions of dollars revenue for maritime commerce and kindred payrolls.

The Pacific fisheries problem, involving past and potential future controversy of grave nature and huge proportions, most seriously aggravated in recent years by costly and continued raids along the North Alaskan rim and in the Bering Sea area, has aroused concern throughout the United States and Canada, while today the complex situation may be considered at best only partially or temporarily remedied. It is a smouldering problem of tremendous economic importance which, like an Aleutian volcano, may explode at any time with ominous economic and international consequences.

It is my aim, therefore, to analyze this fisheries situation factually, graphically and realistically, for purposes of common information as to its economic importance, neither presuming at this juncture to advocate new laws relating to the problem, nor to judge the adequacy of the present laws for the protection of American fisheries' rights and the millions in commerce they involve, from the illegal invasion of American waters by Japanese or any other national fishing interests.

As you are well aware, the problem chiefly relates to salmon, not only one of our most important sources of protein food, but one of our most valuable industries on the Pacific Coast. Valuable to the degree of being indispensable.

Its economic importance may be gleaned from the fact that the average annual Pacific Coast and Alaskan salmon pack in recent years was valued at approximately $97,000,000, and its far-reaching effects on maritime commerce and business payrolls generally are obvious. It is also known that Japanese invasion of American fisheries in recent years took a colossal amount of American propagated and naturally American-owned salmon from technically and lawfully American fishing grounds. The vast importance of this loss economically can likewise be easily visualized—losses of potential port tonnage, losses in payrolls, losses in allied commercial trades and industries.

Perhaps one of the most lucid pictures of this critical situation in its international and economic aspects was given by United States Senator Lewis B. Schwellenbach in a speech before the United States Senate on March 8, 1947.

Some of the observations and figures offered by him now afford timely reference.

"This," said Schwellenbach, "at first blush might appear to be a subject limited in importance to the States upon the Pacific Coast. However, . . . the problem is one which should excite the interests of the entire nation.

"We have been discussing legislation involving international relationships, particularly in the so-called neutrality legislation. It has been our objective to prevent, if possible, American involvement in foreign controversies. To avoid such involvement, the Senate has mandated the voluntary relinquishment of many rights, the protection of which in the past has been viewed as properly essential. I may say it is the unanimous opinion of all who are fully familiar with the problem of the threatened invasion of American fisheries that this problem contains potentialities which may more seriously threaten the peace of the United States than any other on the immediate horizon.

"The problem is dangerous to our international relationships only if it is permitted to continue to be submerged and if the feelings that are now being engendered over it are permitted to smoulder through lack of general understanding.

It involves the future of the fishing industry in the States of California, Oregon, Washington, the Province of British Columbia and the Territory of Alaska. It involves an outstanding wholesome food supply, besides the employment of thousands of our people. We might first judge its importance by the standard of the amount of money that our Federal Government, the governments of the three states, and the Province of British Columbia and the Territory of Alaska spend for the conservation of these fisheries resources.

I quote from the table as follows:

United States Bureau of Fisheries in Alaska, 1927-46 inclusive, for propagation, patrol, research, etc.	$ 3,576,000
United States Bureau of Fisheries in California, Oregon and Washington, salmon hatcheries, 1927-46	*27,000
Territory of Alaska for propagating salmon, cleaning streams, destroying salmon enemies, etc., 1925-46 inclusive	362,000
Territory of Alaska, rebates on taxes account salmon fry released, 1927-36 inclusive	90,000
State of Washington, expenditures for salmon hatcheries, protection of salmon, etc., 1926-45 (number of salmon eggs handled in that period, 1,420,085,000)	1,966,000
State of Oregon, expenditures for salmon hatcheries, protection of salmon, etc., 1927-36 inclusive	1,297,000
State of California, expenditures for hatcheries, patrol, research, etc., on salmon, 1927-36 inclusive	177,000
Bristol Bay (Alaska) packers' contributions for destruction of salmon enemies in that area, 1927-36 inclusive	135,000

Alaska, trout and bounties, fish ladder and salmon streams improvements, WPA funds, 1935-36	45,000
Dominion of Canada, funds spent in British Columbia waters, mostly for conservation, protection and regulation of salmon fisheries, 1927-36 inclusive	4,575,000
Dominion of Canada, in British Columbia, for propagating salmon, 1927-36 inclusive	871,000
Expenditures International Fisheries Commission for conservation, regulation and research on halibut, 1927-36 inclusive	554,270
Biological Board of Canada (Dominion funds), British Columbia division, fisheries and biological research stations at Prince Rupert and Nanaimo, 1927-36 inclusive	991,000
Total for 10 years	$16,101,270
Average per year	1,610,127

Consider next the value, in a typical year, of the manufactured canned fishery products in the territory under discussion as a standard of value of the products involved to determine the importance of the problem itself.

Again quoting the Schwellenbach figures before Congress:

"The number of people engaged in the fisheries industries, the number of vessels and boats so engaged, and the value of the products were as follows:

"Total number of fishermen in the aforementioned territories, 49,882; number of transporters, 2,499; number of persons in wholesaling, canning, etc., 34,649; or a total of 76,926 persons so employed.

"Number of vessels and boats fishing and transporting, 29,914.

"Value of manufacturers, canned fishery products, etc., $97,159,000—nearly one hundred million dollars a year! Can we indeed afford to sit by idly and watch this huge annual revenue depleted by illegal invasion of American rights? Surely no port authority can fail to recognize the far reaching consequences of such a situation as they would affect maritime commerce, business and industry, especially along the Pacific Coast."

With this economic picture in mind, let us digress a moment for consideration of the observations made by the same Senator in a radio address on February 12, 1938:

Senator Schwellenbach then said:

"The people of the United States want peace. I want to talk to you about a problem which is quite likely to disturb the peace of the nation than any other—the Japanese invasion of our North Pacific salmon fisheries.

"Last July (1937) there appeared off the Alaskan coast a fleet of Japanese fishing vessels. No one knows how many there were. Twenty-six were sighted in one place, five in another, four in another.

"These were of the mother ship floating cannery type. That is, they were large steamers, each accompanied by a flock of smaller craft, and each equipped with canning machinery. They carried nets two miles in length. They operated outside the three mile limit. No one knows how many salmon they caught and packed. The presence and operation of these vessels filled our own fishermen with fear and apprehension. They declared that the continuation and extension of the Japanese venture would destroy our Alaska salmon resources within five years.

"You ask why this Japanese invasion should be viewed with such alarm. To understand it one must know something about the salmon. To most people a salmon is merely the occupant of a can—but the truth is that it has a most interesting and spectacular career. It is born in the fly-blown sands of mountain streams or in fresh water lakes. Its first year is difficult to survive—the hatch goes which do survive set forth from their streams of birth and travel the seven seas. In about four years from birth they get homesick and start their journey back—the salmon never forgets where it was born. Unerringly it finds the home stream, where it, too, spawns and dies.

"Over 80 per cent of our salmon supply comes from Alaska. But these are only desirable food when caught just outside of the rivers which they are returning—that is, within 20 miles or so. They have not yet built the proper size or quality out in the deep sea. And once they get into fresh water they deteriorate rapidly.

True conservation requires that sufficient escapement of salmon be permitted to insure that streams be adequately stocked. It is also vital that the portion headed for the streams which would result in overstocking should be caught and used for food.

"One need not be an expert to see how rapidly the Japanese method of fishing will destroy this resource. They spread their two-mile nets and fish all 24 hours of the day. They battle up the area off the coast. They do not permit sufficient fish to pass through to restock the streams. There is no such thing as escapement with Japanese fishing. This is precisely what has resulted from Japanese fishing off the coast of Siberia, where the Russian government has permitted them to fish under a year-to-year licensing agreement.

"It has been off the Siberian coast that they have developed their floating-cannery mother ship method of operating. They learned how much would be their annual catch if they fished 24 hours a day 7 days a week during the entire salmon run. But they did not learn the lesson of conservation. Rather, they now turn toward the salmon resources which we have developed and protected by conservation. They have just about destroyed the Russian salmon runs. They now propose to destroy ours.

"Our government will not permit our own people to fish in this way. We restrict the fishing areas. We limit the sizes of the nets, the number of fishing days a year, the number of hours a day. We designate positions that traps may occupy. We clear our streams so that the fish may get to the spawning grounds. We spend about $400,000 a year to see that our fishing is restricted.

Thus Senator Schwellenbach, like other authorities and lawmakers deals with the essential problems of conservation and scientifically restricted fishing as essential to the preservation of the resource itself while stressing the wanton destruction and selfish folly of those who, for temporary gain, would destroy the resources that we have built—the resources that are our natural and legal rights.

Rightfully these salmon belong to us. It is true, as pointed out by Senator Schwellenbach and by Edward W. Allen of the International Fisheries Commission, that these salmon go out into the open sea beyond the customary three-mile limit to which international law has limited our area of control. It is true that they do not carry the American flag on their backs to command our protection. But they were born in our waters. Our taxpayers spend their money conserving them. We should no more be willing to submit to their destruction than we should be willing to submit to the destruction of any other of our property.

During the past [illegible] somewhat similar situations and disputes have arisen between the United States and Great Britain, Canada, Holland and other foreign governments in relation to salmon, halibut, herring and other fish and the territorial rights or principles of conservation involved.

These disputes have been amicably settled on the basis of right and justice or natural or obvious preference of ownership of rights, but also on the basis of principles of conservation of the resource.

In strict adherence to the principles of these inherently related rights, a bill was presented to the Congress on February 1 and 2, 1938, known as HR 9218, on which comprehensive hearings were held by the Committee on Merchant Marine and Fisheries of the House of Representatives of the Seventy-fifth Congress. This bill embodied drastic and comprehensive measures to specifically prohibit what we contend to be illegal Japanese invasion of our North Pacific fisheries, and what every informed person knows to be wantonly destructive fishing practices in any case, legal or illegal.

This bill was never passed. In fact, it was not intended to pass, but rather to serve notice on invading interests as a process of enlightenment for such interests as well as for the general information and awakening of the people of the United States.

On May 9, 1938, another measure, known as the Copeland Bill, S. 4744, was presented to the Senate and passed, but due to the death of Senator Copeland, and probably to the drastic provisions contained therein, the bill was allowed to die.

It is to be hoped that such measures serve their intended constructive purpose.

The ramifications of international fisheries law applicable to this case are too complex and the important facts and details of the situation too numerous for us to attempt the possibility of treating such an exhaustive subject in a short paper.

In the light of experience, precedent and obvious rights and justice, supported by the inherent and inalienable principles of conservation of resources, and to all practical intents and purposes, we must con-

clude that the application of the out-moded three-mile limit in the Pacific fisheries controversy would be unjust and inconsistent.

The three-mile limit as such is per se an out-moded technicality that belongs to the days when cannon range was only three miles, especially unotar as the Northwestern fishing industry is concerned.

It is therefore very apparent from the foregoing and from studies made by competent authorities, such as Joseph Walter Bingham of Stanford University, Dr. E. D. Clark, President of the Association of Pacific Coast Fisheries, and Edward Allen, member of International Fisheries Commission, and others that legislation must be enacted by Congress in the near future to preserve for this nation this tremendous natural resource.

It is also the consensus of opinion of authorities that alien raids on our fisheries which were discontinued on strong protests by our State Department will be resumed as soon as conditions in their own country place them in a stronger and more advantageous position.

As heretofore stated, I do not wish to be an alarmist, but firmly believe that strong legislation with strict enforcement is necessary. (Applause.)

PRESIDENT ABEL: I think we all appreciated Mr. Farley's paper on fisheries. It is a new subject with us, Mr. Farley. I was very pleased to have you suggest the subject.

We have some remarks by Professor Joseph Walter Bingham of Stanford University, which Mr. Farley has referred to. If it is the pleasure of the group here, we will incorporate Mr. Bingham's remarks in the Proceedings, and not take the time to read them at this time.

International Fisheries Law Applied to Alaskan Waters

Comments sent in by JOSEPH WALTER BINGHAM, *Professor of Law*
Stanford University
Palo Alto, California

Mr. Farley's paper presents vigorously a matter of great importance to the people of the Pacific Coast and, indeed to the whole nation. Japan, in its ambitious planning for economic and military dominance of the Pacific, has included among its objectives control of sea fishing. Fishing always has been a major industry of Japan, and Japanese fishermen claim to be the best in the world. A few years ago, about the time we woke up to the menace of foreign invasion of our Alaskan salmon fisheries, Japan sent a business delegation to the United States. It was received in Washington under the auspices of the Japanese Embassy and then came to the Coast. It arranged a meeting with representatives of Pacific Coast fishing interests. At this meeting the Japanese blandly suggested that they were the world's master fishers; that by right, therefore, they should do the world's fishing; that their overhead costs and labor costs were much lower than those of Americans or Europeans; that if this were given a monopoly of exploitation of the Alaskan fisheries under an organization backed by Japanese, Canadian, and American capital, the profits for all would be great. Of course, they added, Japanese could fish outside territorial waters, regardless of American-Canadian conservation measures, and catch all the salmon they wished as the fish returned to their native streams to spawn, but it would be better to have a friendly cooperative arrangement. Coincidentally with this campaign, the Japanese government announced that it was sending a scientific expedition on a government vessel to Alaskan waters on a three-year mission to determine the value of the fisheries for exploitation. This obviously was an added piece of pressure propaganda in support of the business expedition, but it did not have the expected effect. Immediately a storm of opposition to Japanese encroachment on our salmon fisheries broke and initiated a vigorous campaign which now promises to result in adequate legal protection for all our coastal fisheries. The matter is important not only to our economic interests, but to our political interests in all the Americas, for the Japanese are pursuing the same tactics all along the Pacific coasts of the Americas wherever there are valuable fisheries. Already they have obtained concessions from Mexico and have attempted to get treaty rights from Peru. They have rights also under an agreement with Argentina, and are reported to be negotiating concerning fisheries off the Atlantic coasts of Mexico. They also have invaded coastal fisheries of Australia, the Philippines, and the Dutch East Indies, and they fish off the coasts of China and Siberia.

At present our legal situation is as follows:

(1) Our government has arranged (early in 1938) an informal agreement with Japan that Japan will not license Japanese vessels to fish for salmon in Alaskan waters. They are permitted to fish for crab; and the Japanese government refuses to admit that Japanese vessels had been fishing for salmon in these waters (since Japan has not licensed them to do so), in spite of cogent evidence presented that such fishing had occurred previous to the agreement. This is a temporary arrangement and implies no concession by Japan of right. Our government to control fishing at sea outside the three-mile limit is obviously. Japan could not afford a serious controversy with the United States while carrying on hostilities in China under all the colossal international difficulties of these troublous times. When her hands are free, Japan will return to prosecute her invasions of our fisheries.

(2) Under our existing law, our government could do nothing to stop destructive foreign invasions of our coastal fisheries outside the three-mile limit except to request the government whose flag the poaching vessel flies to prevent the invasion as a matter of courtesy. It commits alone without collateral reasons of major importance to the foreign state would not stop the invasions as long as our government adheres to the three-mile doctrine.

(3) Unfortunately for over one hundred years the United States has been one of the leading propagandists for the three-mile limit of territorial waters as a rule of international law. Great Britain, Russia, and Japan have been the other principal promoters of the doctrine. One of the strong motives back of the doctrine has been that it supports free fishing on foreign coasts against the objection of the coastal state. The doctrine, in brief, limits territorial coastal waters to a strip three miles wide, measured from low water mark, with the addition of certain bays and similar coastal indentations, which are subject to special rules. Bristol Bay probably could not be claimed as territorial waters under these rules, and even if it could, the Japanese could intercept the salmon run outside Bristol Bay. The Anglo-American doctrine confines the control of the coastal state over its sea fisheries to territorial waters so limited. Thus, by our diplomatic record, which has been made chiefly in pursuance of claims throughout the nineteenth century against Great Britain for fish in British Atlantic North American Coasts, we blindly have given Japan a strong argument for insisting that its fishermen have a right to invade our coastal fisheries outside the three-mile limit. Japan can cite our own propaganda against us.

However, the three-mile doctrine is not settled international law. Especially as to coastal fishery control, it always has been opposed by a majority of the coastal states, including Russia, Italy, Spain, Portugal, Norway, Sweden, and all the states of Latin America which have valuable fisheries off their coasts. The doctrine is essentially Anglo-American propaganda. If it was abandoned by Britain and the United States it would collapse. There is no sufficient reason why the United States, at any rate, should not abandon it as to coastal fisheries, and thus do away with an insurmountable legal embarrassment in resisting Japan's invasions of our fisheries. If this were done, Congress should pass legislation modeled on the Dingwell Bill providing for policing our fisheries against foreign encroachments as far to sea as necessary for their protection. Not only is the three-mile doctrine opposed to our very important interests in our coastal fisheries, but it also is proving an embarrassment with respect to control of the coast oil deposits, such as those off Texas and Louisiana in the Gulf of Mexico, and it handicapped our government in dealing with foreign rum-running smugglers during the days of prohibition.

There is no doubt that these and other considerations will lead our government sooner or later to abandon the three-mile doctrine. It should have done so long ago. Now it is only a matter of a short time when the necessity of abandonment can no longer be avoided.

Of one point we can be assured. The first objective of our policy to protect our Alaskan fisheries has been won. The government is awake to their importance and to the threat to our national safety involved in delay in taking the necessary steps to improve our legal and diplomatic position. Let us keep the ball rolling until our defenses are perfected. Mr. Farley's paper is valuable in awakening interest in the campaign for prompt protective action on the part of our government.

PRESIDENT ABEL. If there is nothing further for this morning's session a motion for adjournment is in order.

Pursuant to motion duly made and seconded, the meeting was adjourned at 12:15 P. M.

FRIDAY, AUGUST 25, 1939
2:00 P. M.

The meeting was called to order, with President Abel acting as Chairman.

PRESIDENT ABEL. In accordance with the program we will now proceed with the reports of committees.

The first committee to report is the Committee on Foreign Trade Zones. Mark Gates is chairman of the committee. Is he in the room? No. Well, we'll have to forego that report right now.

The next report is the report of the Committee on Publications. I am the chairman of that committee.

Last year, at Portland, it was decided that the publication now being used by the Association should continue over a period of two years. Therefore, inasmuch as the first year has just been completed, there is still one more year to run on the understanding that we have had with the publisher of the official organ, "Pacific Ports and Marine News." It will come up at the next convention as to whether or not the same publication should be used or a change should be made. That is the extent of the report at this time.

The next report is the report of the Committee on Uniform Rates and Practices. Mr. McCarl is the chairman.

MR. McCARL: I'd like to state that the other members of the committee are H. D. Fadden, Port Analyst of the Port of Seattle, and M. G. Rouse, Secretary of the Board of Harbor Commissioners, Los Angeles.

August 15, 1939

Mr. A. H. Abel, President, Pacific Coast Association of Port Authorities, Oakland, California

DEAR SIR:

Your Committee on Uniform Rates and Practices reports that during the year it has continued its efforts to bring closer together the charges at the respective ports. Several meetings have been held in the respective districts and considerable progress has been made.

In the California District the organization known as the California Association of Port Authorities was placed on a more permanent basis with the election of regular officers. Mr. G. E. Arbogast, President of the Board of Harbor Commissioners, Los Angeles, was elected Chairman, and M. D. McCarl, Traffic Manager and Assistant Port Manager of the Port of Oakland, was elected Secretary. The Association now comprises all of the principal ports and ocean terminal operators of California, and it is expected that considerable progress will be made during the ensuing year in making more uniform the charges applying at the various California ports. It is particularly desired that the charges applying against the cargo, especially the basic charge for the use of the terminal facility, namely, tolls (wharfage) be placed on a uniform basis. Through the functioning of the District Committee Members, it is hoped that the respective Districts can be gradually brought closer into line.

In the North Pacific District the rates applying at the respective ports have been made more uniform and the enforcement of the application of same assured through the completion of an agreement between the ports and various terminal operators, which was filed with and approved by the United States Maritime Commission. The following report of Mr. H. D. Fadden, North Pacific Member of the Committee, will explain what has been accomplished in his District.

"As predicted in my last report, the field of the Northwest Marine Terminal Association was broadened to cover activities beyond uniform rates and tariffs. A committee was appointed and did some active work in the matter of uniform cost accounting at the Northwest ports. A formula for determining direct labor costs on various services, such as handling, carloading, etc., was submitted by the Uniform Cost Accounting Committee, and the various terminal operators are now testing that formula out on actual operations on the terminals. Following is an excerpt of the report of the committee on cost accounting which, in view of the fact that cost accounting is a subject to be discussed at this Convention, I would like the privilege of quoting:

"'In discussing terminal charges involving labor, it has developed that there is a real lack of dependable cost figures. Apparently no two operators include the same items in calculating costs of various operations. This lack of consistent figures will be a very serious matter if, and when, we are brought into a hearing before the State Department of Public Service, or the United States Maritime Commission, to defend any tariff charges on complaint of a shipper.

"The Association was active in securing interpretations and adjustments of the Business and Occupation Tax, and through their legislative committee have watched the proposed national and state legislation while the legislative bodies were in session, keeping all members of the Association advised.

"From time to time matters have been discussed with representatives of other interests, such as the Intercoastal Steamship Freight Association, the Northwest Industrial Traffic Managers' Association, and the North Pacific Coast Freight Bureau covering tariff matters, and many such matters have been amicably adjusted to mutual benefit.

"We find the fact that the Terminal Association exists as a reviewing body of rates, and as a body to which complaints can be made, and also as a clearing house for rumors of cut rates, that 90 per cent at least of the chiseling and suspicion has been eliminated. I believe that the chiselers themselves are better satisfied with conditions in the Northwest than when they were getting apparent advantages through the process of chiseling terminal operators. Stabilization and uniform rates have relieved them of the suspicion that their competitors might be getting better advantages than they through the same processes under which they secured their advantages. The fact that the marine terminals are organized in an association that can speak for the entire group puts them in a much stronger position than they would be if attempting to deal individually.

"The association was active, and with other organizations was successful, in correcting the situation brought about by rate cutting on a terminal not a member of the association. This evil was corrected through hearings before the Maritime Commission.

"The above listed activities are more or less extraneous with the real purpose of the association, which is the establishment of uniform rates and tariffs in the ports of the Pacific Northwest, but these other activities are the broadening activities that have naturally followed the adoption of uniform rates and tariffs.

"Regular agreements were drawn up satisfactory to the U. S. Maritime Commission, signed by various ports and private terminals in the Puget Sound area and filed with the Maritime Commission. In this respect I wish to quote an article from a Washington, D. C., paper appearing in a Special July 4th issue:

"'What the Maritime Commission considers one of the most significant transportation moves in recent years becomes effective at once with official approval by the Commission of formation of a marine terminal association for ports in Washington and Oregon.

"'The association, to be known as the Northwest Marine Terminal Association, has been approved under Agreement No. 6785. The group's formation corresponds to the establishment of a water carrier conference.

"It is one of the first, if not the first, major efforts of terminal operators and related organizations to unite in an attempt to promote fair trade practices and rate stability in this end of the transportation industry, officials say. The Commission in addition to approving wholeheartedly of formation of the organization states it sincerely hopes the practice will spread from the Northwest to all ports and areas.

"Under section 19 of the shipping act, which authorizes formation of carrier conferences, "other persons," including terminal operators and forwarders, may make agreements similar to conference pacts binding them to observe certain provisions of the agreements and, in effect, regulate themselves thereby. The agreements section of the Maritime Commission's division of regulation always has advised all groups under its jurisdiction to regulate themselves voluntarily, and thereby remove the need of government control.

"Especially important this year, when many bills were offered in Congress covering terminal operators and wharfingers into close held control of the commission, the northwest terminal conference formation is a move which if followed generally is conceded as ending all need for legislation to give the commission further power of regulation over this branch of water commerce.

"The only possible need for further commission power, if other ports and related groups follow Northwest Marine, would be to prevent abuses by non-conference operators and even this may not be necessary because the resulting stability of rates and charges to shippers and carriers from a general adoption of the terminal conference idea very likely would cause the benefitting firms to avoid the independent terminal operators, thus either bringing them into the conference pattern or forcing them out of business.

"The N. M. T. A. agreement involves eight northwestern ports, many operating firms and three, ship lines maintaining terminals in the affected areas. The agreement is signed by W. C. Pickford for the port of Seattle; by G. W. Osgood for Tacoma; Ernest Gribble for Olympia; W. J. Murphy for Grays Harbor; L. D. Williams, Jr., for Willapa; T. P. McComber for Vancouver; O. E. Berbe for Bellingham; H. W. Davies for port of Port Angeles, and by several agencies for the port of Portland. In addition American-Hawaiian, Luckenbach and McCormack steamship companies are signatories.

"Under the conference set-up the parties will assess and collect all terminal rates and charges in connection with traffic handled strictly in accord with agreed upon applicable tariffs; no deviation from or violation of these tariffs will be permitted, especially no refunds by any device. All tariffs effective under the agreement containing rates, charges, classifications and all changes thereto, will be filed with the Maritime Commission through the association secretary.

"Further, any party violating the agreement will be subject to fine determined by vote of trustees of the group, which are to be eleven, three from Seattle, three from Portland, two from Tacoma and three from other affected ports. This fine, in-tariff violation matters, shall be no more than ten times the difference between the charges rate and the proper one, but may not be less than $100. A surety bond or $1,000 is required from each participating organization, and trustees will employ auditors to make regular inspections of all firms' books to insure adherence to terms of the agreement.

"New members, limited to any responsible marine terminal operator at a port in Washington or Oregon, may be admitted to the conference upon favorable vote of a majority of the parties to the pact. Parties may withdraw only upon 90 days' notice, to both the commission and the association, but the withdrawal will not be approved except when after 120 days from notice date, no complaint is pending for breach of the agreement. The bond then will be returned and the withdrawal effected. Otherwise the bond will be forfeit pending disposition of the complaint.

"The purpose of the association is, according to its constitution: 'To promote fair and honorable business practices and to establish and maintain just and reasonable uniform terminal rates . . . and practices at northwest ports in connection with water-borne traffic, and to cooperate with marine terminal operators of other districts, either individually or through their associations, to the end that the above purposes may be achieved by such other terminal operators.'"

Through the agencies of the California Association of Port Authorities in the South and the Northwest Marine Terminal Association in the North working in conjunction with the Association's rate committee, it is hoped that further progress toward uniformity along the whole Coast may be accomplished during the ensuing year.

Respectfully submitted,

COMMITTEE ON UNIFORM RATES AND PRACTICES,
M. D. McCarl, *Chairman*

Approved:

H. D. FADDEN,
M. G. ROUSE,
Members of Committee

(Applause.)

PRESIDENT ABEL: Thank you, Mr. McCarl.

On motion duly made and seconded the report was adopted.

MR. FRED PARR (Richmond): Before we have the next report, may I make just one comment on Mr. McCarl's report? The report is excellent. I think they have done a most valuable service. I would like to record for this body two or three ideas concerning this point, and I would like them taken into consideration.

We are trying to get the public parties to cooperate wholeheartedly with the private parties. I'm not introducing this as a resolution, though I had it drafted in that form. I think it is a thing that should be said for information only. I'm not asking for any action by this body, but I would like to read it for the record:

WHEREAS, in Decision No. 29171, Case No. 4090, The California Railroad Commission, after setting forth facts as to the existence of both public and private port facilities in the San Francisco Bay Area, said: ". . . no adjustments are practicable in any of the present rates, rules and practices of the private terminals upon order of this Commission, unless these directly competing public bodies find it desirable to make similar adjustments; . . .

". . . it appears necessary that the rates, rules and practices as set forth in the following order for the private terminals must be conditionally based upon the degree to which such rates, rules and practices are adopted in the future by the respective competing public bodies";

THEREFORE, BE IT RESOLVED, that all operators of publicly owned terminals should voluntarily publish and file their tariffs, leases, financial statements and agreements with the same regulatory body which controls the private utility operator;

AND BE IT FURTHER RESOLVED, that the operators of publicly owned terminals should voluntarily stipulate with the governmental agency controlling the private public utility terminals that no change will be made in their published tariffs except upon giving the same number of days' notice as are normally required by the private public utility operator to make a corresponding change in its tariffs.

Mr. Chairman, I merely want to file this as points that I feel are worthy of consideration both by the California Association of Port Authorities and by the Pacific Coast Association of Port Authorities.

PRESIDENT ABEL: Thank you, Mr. Parr. We will be glad to receive your comments. They will be placed in the Proceedings of the Convention.

MR. GEORGE W. OSGOOD (Tacoma): I would like to inquire either from the Chair or from Mr. Parr if this resolution is intended in any sense to approve regulation of port terminal operators by the Federal Government?

IR. FRED PARR: Mr. Chairman, answering Mr. ood—I had drafted a resolution in which the preamsaid that if we did not do something with conerns in having voluntary understanding, I felt we would e some form of legislation, and I felt that was a step the right direction. If carried out, it might prohibit or ent any such Federal regulation. I'm not intending this statement to imply any understanding or to, in way, commit this body directly or indirectly to any y of regulation except by voluntary act, and I'm tryto emphasize the importance of having this Associaworking together and simply not to say, "We'll iperate" and give all kinds of expressions of coopera and not coming all the way on the part of the pubbodies. If you volunteer to do this thing, there would no legal or binding obligation upon such public body.

MR. OSGOOD: With that understanding, I have no ection to the resolution. I just wanted to introduce that ase of it.

MR. FRED PARR: I consulted the Resolutions Comittee this morning and I said I would like permission submit a statement for the records. I have introduced with their knowledge, but with no endorsement or approval of any kind whatsoever, but merely to get the facts fore the body.

PRESIDENT ABEL: I think that understanding is ear.

Next we have the report of the Committee on Foreign rade Zones. Mark Gates is chairman of that committee.

MR. GATES: Mr. President, there hasn't been much ppening in connection with Foreign Trade Zones dur g the last report of this committee, but just as a matter record, to preserve the continuity, we are putting in a port to this effect:

Your Committee on Foreign Trade Zones begs to report as follows: Since the last report of this Committee the Foreign Trade Zone at bile, Alabama, which started operations on July 21st, 1938, was ed in January, 1939.

The following reports have been received in regard to the opera s of the New York Zone:

Occupancy of its existing storage and manipulation facilities has ched approximately 90 per cent. Extensive additions are under nstruction that, when completed, will provide a general utility lding having space for dry storage, cold storage, and merchandise nipulation, and an 11,000-ton vegetable oil tank storage and pump ation.

In a recent report of the deputy collector of customs at the zone, was stated that since opening in 1937, the zone had received 4,500 shipment lots weighing 100,000 tons and valued at $15,000,000, total of 275,000 packages of various description have gone to the e and 50 ocean freighters have discharged cargo there.

Commodities have come to the zone from 19 European countries, Asiatic countries, 7 African countries, 5 South American countries, North American countries, and from the United States, Puerto o and the Virgin Islands.

From the zone, goods have been re exported to 13 countries of rope, 4 Asiatic countries, and Australia, 3 African countries and Madagascar, 5 South American countries, 4 North American countries and the United States.

Duties collected on merchandise entering the United States from the zone amounted to $656,544 during this period.

Applications for grants from San Francisco, Jersey City, and San Juan, Puerto Rico, are being held in abeyance by the Foreign Trade Zones Board pending further investigation.

Respectfully submitted,

(Signed) M. H. Gates *Chairman*
H. W. Hunter
G. E. Armquist
Pierce H. Cassidy

On motion duly made and seconded the report was adopted.

The next report is the report of the Committee on Honorary Members. Mr. Mumm is chairman of that committee.

MR. HANS MUMM: Mr. Chairman and Members Your Committee on Nominations for Honorary Members for 1939-1940 submits for your approval the following:

Hon. Clarence Dillon, Minister of Embassy, Ottawa, Canada
Admiral E. S. Land, Chairman, U. S. Maritime Commission, Washington, D. C.
Hon. Culbert L. Olson, Governor, State of California, Sacramento, California
Hon. Clarence D. Martin, Governor, State of Washington, Olympia, Washington
Hon. Charles A. Sprague, Governor, State of Oregon, Salem, Oregon
Admiral Arthur J. Hepburn, Commandant, 12th Naval District, San Francisco, California
Col. Warren T. Hannum, Division Engineer, U. S. Army, San Francisco, California
Col. John C. H. Lee, Division Engineer, U. S. Army, Portland, Oregon
Hon. Eric W. Hamber, Lieutenant-Governor, Province of British Columbia, Victoria, B. C.
C. A. Cox, Esq., Assistant General Manager, Canadian Pacific Railway, Vancouver, B. C.
Hon. Francis H. Gentry, Mayor, Long Beach, California
Hon. Fletcher Bowron, Mayor, Los Angeles, California
Lieutenant Colonel L. C. Kellum, District Engineer, U. S. Army, Los Angeles, California
Hon. T. D. Pattullo, Premier, British Columbia
Admiral Claude C. Bloch, Commander-in-Chief, United States Navy, Long Beach, California

Respectfully submitted,

(Signed) Hans Mumm, Jr. *Chairman*
R. R. Rim
F. H. Gentry
Leland Overton
Don Maxwell

On motion duly made and seconded, the report was adopted.

The next report is the report of the Committee on Credentials. Mr. H. W. Hunter, will you render your report?

Mr. Secretary, will you read the report?

SECRETARY McCARL: I would be glad to.

August 24, 1939

Mr. A. H. Abel, President, Pacific Coast Association of Port Authorities, Oakland, California

Dear Sir:

We attach hereto list of the Delegates to the Pacific Coast Association of Port Authorities Convention, who have been properly certified and registered.

COMMITTEE ON CREDENTIALS
(Signed) H. W. Hunter *Chairman*,
J. A. Earley

For list of delegates and members see page 6

PRESIDENT ABEL: Thank you, Mr. Hunter, for the excellent report. We are pleased to know that the Delegates' Credentials are in order.

Next we have the report on By-Laws and the Constitution. Henry Davies, will you please give this report?

MR. HENRY DAVIES (Port Angeles, Washington): Mr. President and delegates:

The duties of this committee haven't been very strenuous. However, we have this one recommendation we wish to offer which we think of some importance to both small and large ports.

The only matter that has come to the attention of the Committee as that of increasing the number of Directors from ten to fifteen.

The Committee recommends that the matter be discussed and acted upon in open meeting.

H. W. DAVIES, *Chairman*
T. P. MACCOMBER,
GEORGE MOORE,

MR. GEORGE OSGOOD (Tacoma): I move that the By-Laws be amended at this meeting to conform to the By-Laws and increase.

MR. K. J. BURNS (Vancouver, B. C.): I second the motion.

PRESIDENT ABEL: All those in favor, signify by saying "aye"; contrary, "no." The motion is carried.

MR. MARK GATES (San Francisco): The matter I had intended to bring to the attention of this committee is one which is in connection with the records of this Association.

I think you are familiar with the fact that you yourselves, or rather your organization, attempted to locate some of the records of this Association from its conception to incorporation, together with dates in the history of the Association, and they were unable to be found.

My idea is that either a committee be appointed to see what of the records can be secured from the various members—there must be a great many records—or that the By-Laws and Constitution be amended to provide for an historian of this Association to make it his business to gather what information he can with regard to the Association and keep it up as we progress.

I will make it in the form of a motion, or I would rather submit it to the Committee to take whatever action they please.

MR. DAVIES: As Chairman, I will take it upon myself that we appoint an historian.

MR. GEORGE W. OSGOOD (Tacoma): I second the motion.

PRESIDENT ABEL: You have heard the motion and second. All in favor, signify by saying "aye"; contrary, "no." The motion is carried that we have an historian.

The next report is the Committee on Resolutions. Mr. Smith Wilson, have you your report ready?

MR. SMITH WILSON (Seattle): Mr. President and gentlemen:

The Resolutions Committee has a rather voluminous report here and we have a number of resolutions. It seemed quite necessary that we have these resolutions and I think they should be separately acted upon rather than take them as a whole.

Mr. Wilson then read the seventeen resolutions drawn up by the Committee, and all were passed as read, with the exception of Resolution No. 16 (see comments following Resolution No. 16). The Secretary was instructed to forward copies of the Resolutions to appropriate parties.

RESOLUTION NO. 1

BE IT RESOLVED that our hosts, the Port of Oakland, at its Twenty-sixth Annual Convention of the Pacific Coast Association of Port Authorities, be voted our hearty thanks and appreciation for a very constructive and enjoyable convention.

(The resolution, having been duly seconded and put to a vote, was unanimously carried.)

RESOLUTION NO. 2

BE IT RESOLVED that the State Harbor Board of the Port of San Francisco, The Marine Exchange, Propeller Club, Foreign Trade Club, hosts to this organization the evening of August Twenty-fourth, be extended our sincere thanks and appreciation for a most entertaining and delightful evening enjoyed by the Delegates in attendance.

(The resolution, having been duly seconded and put to a vote, was unanimously carried.)

RESOLUTION NO. 3

BE IT RESOLVED that the thanks of this Association be extended to Mr. A. H. Abel, President, for the capable and efficient manner in which he has conducted the program of this convention.

MR. K. J. BURNS: May I interrupt, Mr. Wilson, just a minute?

On this resolution, Mr. President, the best the President or the Secretary usually get is a vote of thanks. We are lucky to get that in Vancouver. After we met here on Monday and Tuesday, we decided we should try to at this particular time show some appreciation to you personally.

The subscription we took from each other would not hurt anybody, and I would like to ask you to accept, on behalf of this Association, this little souvenir. It has no significance at all, because it is a traveling bag. The only thing we hope is that the first time you use it you will come to British Columbia. We had some money left, and with the cooperation of the boys here I am going to ask Mr. McCarl if he would give that to some charitable organization in Oakland, if that is agreeable. (Applause.) If you will accept this traveling bag, Art, with our best of wishes. (Applause.)

(The resolution, having been duly seconded and put to a vote, was unanimously carried.)

PRESIDENT ABEL: It has indeed been a great pleasure to act as your President for the past year. I appreciate your gift very much and thank you sincerely. I will endeavor to use it on a trip to Vancouver as suggested by Mr. Burns.

RESOLUTION NO. 4

BE IT RESOLVED that a sincere vote of thanks be extended to Mr. M. D. McCarl, Assistant Port Manager and Traffic Manager of the Port of Oakland, for his capable and untiring efforts in handling the details of this Twenty-sixth Annual Convention of the Pacific Coast Association of Port Authorities.

(The resolution, having been duly seconded and put to a vote, was unanimously carried.)

MR. McCARL: I'd just like to say a word. I want you to know that I greatly appreciate the sentiments in that resolution. Although there has been some effort required in carrying on the duties of the office—in working with our worthy President in making preparations for this Convention, as we labored down at the office in the evenings—we did so with the feeling that if all of the delegates had an enjoyable time we would be well repaid for our efforts. I'll greatly cherish having that resolution in my files, because I know when I have occasion to refer to it, I'll be reminded of the fine group of fellows and ladies attending this Convention, and of the splendid spirit of fellowship that prevailed throughout the Convention. Again I wish to thank you. (Applause.)

PRESIDENT ABEL: I want to add just a word. Mr. McCarl has certainly done a wonderful job as Secretary. He has carried on the work—pushed it as if needed to be pushed in an organization of this sort, and I think much of the success of the Convention is due to Mr. McCarl. I feel that way about it. (Applause.)

RESOLUTION NO. 5

BE IT RESOLVED that the sincere thanks of this Association be tendered to the Board of Port Commissioners and the entire staff of the Port of Oakland who have so unstintingly given of their time in making our convention the outstanding success that it has been.

(The resolution, having been duly seconded and put to a vote, was unanimously carried.)

RESOLUTION NO. 6

BE IT RESOLVED that this Association express sincere appreciation to the Lions Club of Oakland for the very enjoyable luncheon tendered to the Membership, August 23, 1939.

(The resolution, having been duly seconded and put to a vote, was unanimously carried.)

RESOLUTION NO. 7

BE IT RESOLVED that this Association express sincere appreciation to the Oakland Chamber of Commerce for the very enjoyable luncheon tendered to the Membership, August 24, 1939.

(The resolution, having been duly seconded and put to a vote, was unanimously carried.)

RESOLUTION NO. 8

The members of the Pacific Coast Association of Port Authorities deeply regret the passing of Mrs. Frank G. White, wife of the Chief Engineer of the Board of State Harbor Commissioners, San Francisco, California.

BE IT RESOLVED that the members of this Association feel a personal loss in her passing and that our thoughts are with the members of her family during this period of bereavement, and our heartfelt sympathy is extended to them; and

BE IT FURTHER RESOLVED that this resolution be spread on the minute records of this Association and that a copy be forwarded to her family.

(The resolution, having been duly seconded and put to a vote, was unanimously carried.)

RESOLUTION NO. 9

The members of the Pacific Coast Association of Port Authorities deeply regret the passing of Mr. P. W. Meherin, ex-President of the State Board of Harbor Commissioners, San Francisco, California; and

BE IT RESOLVED that the members of this Association feel a personal loss in his passing and that our thoughts are with the members of his family during this period of their bereavement, and our heartfelt sympathy is extended to them; and

BE IT FURTHER RESOLVED that this resolution be spread on the minute records of this Association and that a copy be forwarded to his family.

(The resolution, having been duly seconded and put to a vote, was unanimously carried.)

RESOLUTION NO. 10

The members of the Pacific Coast Association of Port Authorities deeply regret the passing of Mr. Paul C. Hofmann, Commissioner and Secretary of the Board of Harbor Commissioners, Long Beach, California; and

BE IT RESOLVED that the members of this Association feel a personal loss in his passing and that our thoughts are with the members of his family during this period of their bereavement, and our heartfelt sympathy is extended to them; and

BE IT FURTHER RESOLVED that this resolution be spread on the minute records of this Association and that a copy be forwarded to his family.

(The resolution, having been duly seconded and put to a vote, was unanimously carried.)

RESOLUTION NO. 11

The members of the Pacific Coast Association of Port Authorities deeply regret the passing of Mr. F. R. McD. Russell, K. C., Past President of the Board of Harbour Commissioners, Vancouver, B. C.; and

BE IT RESOLVED that the members of this Association feel a personal loss in his passing and that our thoughts are with the members of his family during this period of their bereavement, and our heartfelt sympathy is extended to them; and

BE IT FURTHER RESOLVED that this resolution be spread on the minute records of this Association and that a copy be forwarded to his family.

(The resolution, having been duly seconded and put to a vote, was unanimously carried.)

RESOLUTION NO. 12

WHEREAS, the members of this Association have come to know and respect Colonel John C. H. Lee, Division Engineer, United States Army, and have had the privilege of knowing Mrs. Lee; and

WHEREAS, it has just been learned that the Lees were in an accident resulting in the life of Mrs. Lee being taken away;

THEREFORE, BE IT RESOLVED by this Association in convention assembled that this news and knowledge has shocked each member individually and the heartfelt sympathy of each member is extended to Colonel Lee and his family in their bereavement, and this Association notes with sadness life's sorrow as in this instance brought so close.

(The resolution, having been duly seconded and put to a vote, was unanimously carried.)

RESOLUTION NO. 13

WHEREAS, the Pacific Coast Association of Port Authorities did, at its Twenty-fifth Annual Convention held in 1938, resolve that the Merchant Marine Act of 1936 should be amended so as to provide that new appointments and reappointments to the United States Maritime Commission be selected on a basis of representation in a manner that each section of the Nation interested in ocean commerce be properly and equitably represented; and that the President be implored to select a Pacific Coast man for any early vacancy that may occur on the Commission.

AND WHEREAS, the objects sought to be accomplished by that resolution have not yet been attained;

NOW THEREFORE, be it resolved by the Pacific Coast Association of Port Authorities,

That the said resolution adopted at its annual convention in 1938 be and it hereby is reaffirmed in every particular, that a copy thereof be attached to and made a part of this resolution, and that a copy of this resolution be forwarded to the President of the United States, to the United States Maritime Commission, to each Congressional delegate from the States on the Pacific Slope, to the American Association of Port Authorities and to Chambers of Commerce and other civic bodies of the Pacific Coast.

(The following is Resolution adopted in 1938, referred to above.)

RESOLUTION NO. 40

WHEREAS, the maritime commerce of the Pacific Coast is of great importance, especially so in view of the international situations which create a grave problem of national defense in which shipping, shipbuilding and repair facilities on a large scale in this region are an imperative and vital necessity; and

WHEREAS, when thought is given to the slight recognition given this section in the appointment of commissioners to the United States Maritime Commission, these considerations are neglected and the importance of the Pacific Coast is minimized; and

WHEREAS, a proper consideration of the shipping requirements of the whole nation demands adequate representation on the United States Maritime Commission in order to provide a necessary balance of opinion and viewpoint which will be without sectional bias;

NOW, THEREFORE, BE IT RESOLVED by the Pacific Coast Association of Port Authorities, in regular meeting assembled at Portland, Oregon, on August 17th to 20th, 1938, that the Merchant Marine Act of 1936 should be amended immediately, so as to provide by law that new appointments and [illegible] the United States Maritime Commission be made [illegible] in a manner that each section of the [illegible] shipping in ocean commerce be properly and equitably represented;

BE IT FURTHER RESOLVED that the President be implored to select a Pacific Coast man for any early vacancy that may occur on the Commission, and

BE IT FURTHER RESOLVED that copies of this resolution be forwarded to the President of the United States, the United States Maritime Commission, the Congressional delegations of the states on the Pacific Slope, American Association of Port Authorities, and Chambers of Commerce and other civic bodies of the Pacific Coast.

(The resolution, having been duly seconded and put to a vote, was unanimously carried.)

RESOLUTION NO. 14

WHEREAS, the port facilities, both public and private, of the Pacific Coast of the United States represent a very large investment;

WHEREAS, these facilities are dedicated to the services of the shipping public which is entitled to an uninterrupted flow of maritime commerce;

AND, WHEREAS, disputes between waterfront employers and labor have resulted in inestimable loss and hardships to maritime commerce, to ports, to labor and more especially to the public;

NOW, THEREFORE, be it resolved that this Association in convention assembled does earnestly urge that all parties concerned agree that all points in dispute in connection with the renewal of the working agreements next September 30th, be submitted to arbitration and the arbitrator's decision be final, to the end that no further stoppages or delays be incurred by maritime commerce and that the Secretary of the Pacific Coast Association of Port Authorities forward copies of this resolution to the Waterfront Employers and to the local Unions at the various ports of the Pacific Coast.

(The resolution, having been duly seconded and put to a vote, was unanimously carried.)

RESOLUTION NO. 15

WHEREAS, this Association views with alarm the false economic movement to tax inland waterways thus violating an American principle and public opportunity of traditional standing; and

WHEREAS, it is the conviction of this Association that the development of our naturally unsurpassed inland waterways [illegible] the development of our ports, our coastwise and overseas trade;

THEREFORE, BE IT RESOLVED that the President, the Congress and the Interstate Commerce Commission of the United States be and hereby are advised that this Association stand unalterably opposed to the taxation of our natural waterway traffic and any tolls or tolls or similar trade barriers whatsoever.

(The resolution, having been duly seconded and put to a vote, was unanimously carried.)

RESOLUTION NO. 16

WHEREAS, this Association is still convinced as it has [illegible] been convinced in the past that the improvement of our Nation's ports, our rivers and harbors and their maintenance are best [illegible] by the Army Engineers under the direction of the Secretary of War and the supervision of the Chief of Engineers; and

WHEREAS, in light of ominous world events it is the opinion of this Association that the defense value of having port channel improvement and port defense both under the War Department [illegible]

WHEREAS, the Congress has recently enacted as a rider to the Flood Control Act a provision specifying in effect that all [illegible] performed by the Army Engineers under the direction of the Secretary of War and the supervision of the Chief Engineer shall be [illegible] tions of the Engineer Corps;

NOW, THEREFORE, be it resolved that this Association heartily approves and endorses the action of the Congress in confirming the retention of these vital functions in the War Department under the Secretary's direction and the supervision of the Chief of the Army Engineers.

MR. K. J. BURNS (Vancouver, B. C.): Do you think it necessary to mention "American" ports, you mentioned "National" ports, do you think it would be necessary, because there are several Canadian ports?

MR. OSGOOD (Tacoma): I had the privilege of introducing that resolution. I think your criticism is well taken; it should be all ports.

The reason for that resolution, as you are aware, is that Congress has at various times and still has under consideration a forming of a Public Works Commission which would take away the duties of Army Engineers in our public works, and we certainly do not want that. We have worked along with the Army Engineers and they have cooperated, and we would never know what a Public Works Commission would put us up against and that was the reason for this resolution, and I hope you will pass it.

(The resolution having been duly seconded and put to a vote, was unanimously carried after the correction as suggested above was approved and the Secretary was instructed to forward copies of same to the President of the United States, all Congressional Delegates, Chief of Engineers, U. S. Army and the Secretary of War.)

RESOLUTION NO. 17

WHEREAS, Divine Providence has seen fit to remove from the great brotherhood of bachelors Henry Davies, Manager of The Port of Port Angeles, and Arthur Eldridge, Manager of that other port of the Angels, Los Angeles, and plunge them into the condition of servitude that seems to be the lot of the unwary male; and

WHEREAS, these men have listened to the biblical admonition to go forth and be fruitful and to multiply; and

WHEREAS, certain political subdivisions of these United States have encouraged the idea of a free distribution of ham and eggs, thrifty every Thursday and the more abundant life;

NOW, THEREFORE, be it resolved by the Pacific Coast Association of Port Authorities in convention assembled in the City of Oakland, California, that we commend the action of these men, not only to the coming generation of Port officials, but to the citizenry generally to the end that courage, self denial and a willingness to give up liberty itself shall not perish from this country of ours; and

BE IT FURTHER RESOLVED, that in making the sacrifices above set forth, these men have earned our sincerest sympathy born of a knowledge of what confronts them in the years to come.

P. S.—If for any reason anyone thinks that ham and eggs and thirty every Thursday is not sufficient for the coming generation the Committee offers the following substitute—$10.50 every night. Why wait for Thursday, and no work between meals, not even the production of more Bridges through matrimonial projects or otherwise.

(The resolution, having been duly second and put to a vote, was unanimously carried.)

PRESIDENT ABEL: The next is the Report of the Committee on Nominations. Joe Brennan.

MR. JOSEPH BRENNAN (San Diego): The following is the report of the Committee on Nominations:

Mr. President and Gentlemen:

We have before this committee an invitation for the next Convention from the City of Long Beach, California, signed by the Honorable Francis H. Gentry, Mayor, substantiated by telegram from the Mayor; a letter from Long Beach Chamber of Commerce signed by George A. Hart, President, and a letter from the Chamber of Commerce signed by George W. Isaacs, Manager. We also have an invitation from the City of Los Angeles, California, signed by his Honor Mayor Fletcher Bowron; James L. Beebe, President of the Los Angeles Chamber of Commerce; Roger W. Jessup, Chairman Board of Supervisors of Los Angeles County; Robert L. McCourt, President, Los Angeles Junior Chamber of Commerce; Katherine C. Moore, Chairman Women's Convention Committee; Grace S. Stuermer, President, Women's Community Service Auxiliary; also one from the Hollywood Convention and Tourist Bureau, signed by Dan G. Addison, Manager.

Gentlemen, I hope you will realize that this committee was placed in a rather embarrassing position, having two invitations from two ports in such close proximity.

As you will probably remember, Los Angeles last year had extended an invitation to the Association for the 1940 Convention, which was to be given further consideration at this Convention. One factor which we took into consideration in reaching our decision was that Long Beach has never been host to the Association. In the interests of peace and harmony in the port movement, Los Angeles very graciously withdrew in favor of Long Beach, and

I, therefore, move, Mr. President, that the Convention in the year 1940 be held at Long Beach, California.

The committee recommends that the Secretary write a letter expressing the appreciation of the Association for the very kind invitations for next year's Convention from the City of Los Angeles, and also from the Hollywood Convention and Tourist Bureau.

Mr. Chairman, I move that the Secretary be so instructed.

Mr. President and Gentlemen: The Nominating Committee places in nomination before you as Officers and Directors for 1940 the following:

President—G. E. Arbogast, President, Port of Los Angeles, Los Angeles, California.

Vice-President—I. M. Stevens, President, Port of Long Beach, Long Beach, California.

Vice-President—K. J. Burns, Port Manager, National Harbours Board, Vancouver, B. C.

Secretary-Treasurer—D. A. Marshall, Port Manager, Port of Long Beach, California.

Past President—A. H. Abel, Port Manager and Chief Engineer, Port of Oakland, Oakland, California.

DIRECTORS

B. C. Allin, Director of Port, Stockton, California.

J. W. Brennan, Port Director, Port of San Diego, San Diego, California.

J. A. Earley, Vice-President, Port of Seattle, Seattle, Washington.

T. H. Banfield, Commissioner, Commission of Public Docks, Portland, Oregon.

H. W. Hunter, Commissioner, Port of Bellingham, Bellingham, Washington.

K. K. Reid, Chairman, New Westminster Harbour Commission, New Westminster, B. C.

Frank H. Gowdy, Manager, Port of Longview, Longview, Washington.

W. J. Murphy, Manager and Engineer, Port of Grays Harbor, Grays Harbor, Washington.

F. H. Marvin, President, Port of Tacoma, Tacoma, Washington.

M. M. Gates, Secretary, Board of State Harbor Commissioners, San Francisco, California.

Fred Epperson, Commissioner, Port of Port Angeles, Washington.
S. C. Trytmeer, Commissioner, Port of Everett, Washington.
David Burrows, President, Port of Port Angeles, Washington.
Martin Gottfeld, President, Port of Olympia, Washington.
H. J. Keiler, President, Port of Vancouver, Washington.

(Signed) J. W. Brennan, *Chairman*
A. D. Merrill
W. Murphy
Geo. Osgood
Col. B. C. Allin

MR. ARTHUR ELDRIDGE (Los Angeles): I second the motion that the Convention be held in Long Beach in 1940.

PRESIDENT ABEL: It has been moved and seconded that the next Convention of the Pacific Coast Association of Port Authorities be held in Long Beach. All in favor signify by saying "aye"; contrary minded, "no." The resolution to hold the Convention in Long Beach is adopted.

MR. I. M. STEVENS (Long Beach): On behalf of the Long Beach public, may I thank this Convention for the honor and we shall try to equal the record made this year at Oakland as hosts.

PRESIDENT ABEL: Thank you, Mr. Stevens. I think you can do your part. You have in the past.

You have heard the report of the Nominating Committee. Is there a motion to adopt the resolution?

MR. SMITH M. WILSON (Seattle): Mr. President, I move that the Secretary be instructed to cast a unanimous ballot for the entire nominating list.

MR. GEORGE W. OSGOOD (Tacoma): I second the motion.

PRESIDENT ABEL: All in favor signify by saying "aye"; contrary minded, "no." The motion is carried.

MR. GEORGE OSGOOD: May I interrupt at this time because he may get away. I recall the very pleasant resolution No. 17, and when it was read there was only one of the constituents in the room, and we had better put a ball and chain on him. I suggest that the Secretary read that resolution again.

Resolution No. 17 was read again.

PRESIDENT ABEL: Is the Sergeant-at-Arms in the room? We have lost them both. Joe Brennan, you are temporary Seageant-at-Arms. Will you escort Mr. Arbogast to the front of the room? (Applause.)

I can't give you a gavel; I will have to present you with the tail end of the bell clapper. May we have a few words from you, President Elect?

PRESIDENT-ELECT ARBOGAST (Los Angeles): President Abel and members of the Pacific Coast Association of Port Authorities:

I sincerely thank you for your confidence and honor you have conferred upon me. The task, the problems of the new year I approach courageously but with the deepest feeling of humility. I realize that the Pacific Coast Association of this organization has a tremendous bearing upon the social, the industrial, and the economic life of the future development of the Pacific.

It is a great asset in the future development of the Pacific industrially and commercially, and has a tremendous bearing upon our commerce and our shipping.

I can't help feel that fear to enjoy or regain our fullest measure of prosperity is wrong, and we must not neglect this important industry. Certainly, if we are to justify the Merchant Marine, the Maritime Commission is now building; if we are to adequately support this Merchant Marine, we can only do so by maintaining continuity of service.

It will be the pleasant duty of your officers and board of directors during the coming administration to promote courageously and actively carry on a program of mutual confidence and goodwill to the end that we maintain continuity of service, and in order that we may not only increase shipping upon the Pacific Coast, but regain some of the lost commerce that we have lost through adverse circumstances.

Again I want to thank you for the opportunity of being with you for the opportunity of gaining your friendship, your good will, and your cooperation, and I pledge during the next year not only on my part, the officers and board of directors, but also pledge sincere support of brother commissioners who are here, other officers of the Los Angeles staff—we are eleven at this Convention—we pledge our support to our Vice-President, Mr. Stevens of Long Beach, and that friend of mine, Don Marshall, and we will help them put over the finest Convention possible. Thank you. (Applause.)

PRESIDENT ABEL: Gentlemen: Have no fear; the Association affairs are in good hands for the next year.

Is there any further unfinished business?

Mr. McCarl made an announcement with reference to the showing of Port pictures that evening at 5:00 o'clock and also one concerning the transportation to the Fair the following day.

PRESIDENT ABEL: Thank you for the announcements, Mr. Secretary. I note Mr. Eugene Roland, vice president of our Port Board, is with us. Mr. Roland, would you mind giving us a few words? (Applause.)

MR. EUGENE ROLAND (Oakland): Mr. President, I have been a very interested spectator and have attended every one of these meetings I could get to. I fell by the wayside occasionally in the Marine Room, which is a snare, but I succeeded in passing that most of the time, getting out on the open sea, and it has been a delightful occasion to be with you and see how earnest and serious the Convention has been in the study and consideration of these problems. I got a lot out of it. I want to thank the individual readers of the papers and the gentlemen entering into the discussion informally on the floor. I have information I know will be useful to me and to the Port of Oakland. I thank you for being here. Thank you, Mr. President. (Applause.)

PRESIDENT ABEL: Thank you, Mr. Roland.

Mr. Sergeant-at-Arms, will you kindly escort the Vice-President-Elect and also the Secretary Treasurer-Elect to the platform? (Applause.)

Will George Osgood please come forward? It isn't often, gentlemen, we are honored in having a President of the American Association of Port Authorities with us during the Pacific Coast Association Convention, and we are certainly honored, George, in having you here. It was fine you could come down; you have always been a very active worker in our Association. Would you like to say a word or two?

MR. GEORGE OSGOOD: Mr. President and Gentlemen, I must confess I did come up to the table to ask if Mr. Abel would move for adjournment. It has been my privilege to do that at several conventions, and I so move. In doing so, I desire to invite you all and extend the most hearty word of welcome to meet us in Milwaukee at the annual Convention of the American Association of Port Authorities, October 8 to 12. We would be glad to have you, and those that do come will be received with open arms. (Applause.)

PRESIDENT ABEL: You have heard the motion to adjourn. Is there a second?

MR. K. J. BURNS: I second the motion.

The motion, upon being put to a vote, was carried.

The Convention adjourned at 2:45 P. M.

PACIFIC COAST ASSOCIATION OF PORT AUTHORITIES

CASH RECEIPTS AND DISBURSEMENTS

JANUARY 31, 1939, TO DECEMBER 31, 1939

RECEIPTS:		
Received from Treasurer	$ 390.32	
Dues Class "A" Ports (Six)	900.00	
" " "B" " (Three)	150.00	
" " "C" " (Thirteen)	325.00	
Contributing Members (Twenty-one Firms)	525.00	
Associate Members (Seven Individuals)	70.00	
Registrations	405.00	
Contributions	1,700.25	
Refunds on Exposition Tickets	43.04	
TOTAL RECEIPTS		$4,508.61
DISBURSEMENTS:		
Stationery and Postage	$ 128.34	
Convention Expenses	3,379.87	
Bank Charges	3.12	
Printing Convention Proceedings	607.42	
TOTAL DISBURSEMENTS		4,118.75
Balance December 31, 1939		$ 389.86

2325

EXHIBIT No. 63

A FORMULA FOR THE DETERMINATION OF PORT AND MARINE TERMINAL COSTS

FOR

RATE MAKING PURPOSES

by

FORD K. EDWARDS

Transportation Economist

California Railroad Commission

To Accompany a Paper entitled "Uniform Cost Accounting as Related to Ports" introduced before the Pacific Coast Association of Port Authorities, at Oakland, California, August , 1939.

BASIC PLAN OF THE FORMULA

The Formula is more or less self-explanatory and each schedule is accompanied by footnotes covering points as to which doubt may exist. The following brief outline, however, may be of added assistance.

The Formula takes the total annual expense incurred in the operation of a port or marine terminal and breaks it down to reflect both the annual cost and the unit cost (i.e., cost per ton) of performing each individual service. Such breakdown fundamentally rests upon the use made of the staff and of the physical plant and facilities of the port. The resultant costs indicate what each class of user ought to pay from a purely cost-of-service standpoint. For rate making purposes such result must be subsequently tested for (1) ability of the traffic to pay, and (2) competitive factors. To the degree that one class of user cannot or does not meet its proper share of the cost, the deficiency must either be laid against the remaining users, or be made up through contributions from outside sources, or (in the case of private terminals), result in reduced returns or abandonment.

The services for which the costs are thus determined are as follows:

(a) Dockage - Embraces all costs assignable to the vessel for the use made of waterways and wharves in the handling of cargo. The vessel is charged for all space up to (and from) but not including, the point at which the cargo comes to rest. The expenses consist principally of the "carrying charges" on the portions of the structures thus allocated. For a definition of dockage as the term is used herein see footnote 2/ to Schedule B. For rate making purposes the charges involved herein may be subsequently broken down into "dockage" and "pier rentals."

(b) Tolls - Embraces all costs assignable to the shipper for the use of aprons, transit sheds, trackage, roadways, etc. For definition of tolls as used herein see footnote 3/ to Schedule B.

(c) Service Charges (Clerking Cargo) - Embraces cost of clerical, checking and related services rendered for the account of the vessel where the vessel does not maintain its own terminal organization. For definition of the term as used herein see footnote 4/ to Schedule B.

(d) Wharf Demurrage - Embraces all costs for floor space, cargo handling, and overheads assignable to the shipper whose goods remain beyond the free period. For definition of wharf demurrage as used herein see footnote 5/ to Schedule B.

(e) Shed Rentals - Embraces cost (on a square foot basis) for non-cargo office and other areas rented to steamship companies, stevedoring companies, and others.

(f) Car Loading

(g) Car Unloading

(h) Weighing

(i) Stencilling

(j) Recoopering

(k) Labor Sold on Cost Plus Basis

(l) Handling Lines

(m) Other

In addition to the above items the expenses for warehousing (domestic), grain elevators, stevedoring, terminal railway operations, etc., are included (lines 52-55, Schedule B) and assigned to "Non-Terminal Operations." The sole purpose for their inclusion in the Formula is first, to permit the latter to cover 100 per cent of the operations should the cost analyst so desire, and secondly, to permit certain of the expenses for traffic, general, and administrative overhead to be assigned to these non-terminal operations where such is appropriate. No schedules are provided herein for the further breakdown or analysis of these non-terminal costs.

5. All allocations of expense, as noted above, are designed to reflect the use made by the vessel and cargo, respectively, of the plant, facilities, and staff of the port or terminal. The determination of the use made is based fundamentally upon an interpretation of the relative obligations of the vessel vs. the cargo as indicated by steamship and wharfinger tariffs, bills of lading, port practices, decisions of Federal regulatory commissions, etc. In Simpson vs. Shepard, U. S. 230, 459-461, the Supreme Court pointed to the use factor as the proper means of distributing costs. This decision stated in part: "When rates are in controversy, it would seem to be necessary to find a basis for a division of the total value of the property independently of revenue, and this must be found in the use that is made of the property. That is, there should be assigned to each business that proportion of the total value of the property which will correspond to the extent of its employment in that business. It is said that this is extremely difficult, in particular, because of the necessity for making a division between the passenger and freight business, and the obvious lack of correspondence between ton-miles and passenger-miles. It does not appear, however, that these are the only units available for such a division; and it would seem that, after assigning to the passenger and freight departments respectively, the property exclusively used in each, comparable use-units might be found which would afford the basis for a reasonable division with respect to property used in common." (Emphasis supplied).

6. The Formula gives no separate recognition to cases where pier rentals are charged to steamship lines. The assumption in such case is that the dockage charges, as determined herein, are subsequently separated for rate making purposes into two parts, i.e., "Dockage" plus "rentals." The rentals may even be large enough to cover some of the costs assigned herein against tolls. Indeed at some ports the vessel assumes the entire cost and at others the cargo assumes the entire cost. Such ultimate assessment of the charges has no bearing, of course, upon the application of the Cost Formula, the results of which are necessarily independent of any subsequent finding as to the ability or lack of ability of the respective users of the services to bear the expenses assigned to them.

All steps in this Formula were developed and applied during the course of the investigation of marine terminals by the California Railroad Commission. See Final Report of the Engineering Division of the Commission, dated May 16, 1936, in Case No. 4090, (Introduced by Edwards and Differding).

7. The Formula may be used as desired to develop (1) the total costs assignable to each service, (2) the average unit cost in each service (say, per ton), or (3) the average unit cost for each class of tonnage in each service (i.e., separately for pipe line tonnage, bulk cargo, and general cargo).

PROCEDURE IN THE USE OF THE FORMULA AND APPLICATION OF THE SCHEDULES

Summary Schedule.. This schedule serves to sum up the costs obtained from the application of the Formula and to provide a comparison with the corresponding revenues. To facilitate comparisons the total costs and total revenues for each service are also shown on a unit basis wherever such is possible. Insert in columns (e) and (f) the annual revenues derived from each service. Upon completion of the cost study fill out columns (c) and (d) from the sources indicated.

Schedule A. This schedule serves to break down the "carrying charges," (i.e., maintenance, depreciation, insurance, taxes, and return) by individual wharf structures and parts of such structures for the purpose of permitting of a subsequent apportionment of such costs to the respective services listed in Schedule B. In applying this schedule the analyst should add as many sheets as are necessary to cover all wharf units.

BASIC PLAN OF THE FORMULA
(Continued)

Schedule B. This schedule serves to initially assign the costs to each service or group of services. For illustrative purposes dockage costs are reduced to a unit cost per "12-hour berth occupancy."

Schedule C. This schedule serves to develop the average cost for tolls as well as to break down the toll charges by three classes of tonnage, giving recognition to the size and extent of the plant investment required for each class.

Schedule D. This schedule serves to develop the average service charge per ton as well as to break down the "service charge" (clerking) expenses between four classes of tonnage giving recognition to the clerical, checking, and overhead costs occasioned by each class. Omit the schedule where these services are not provided.

Schedule E. This schedule serves to develop not only the total cost for wharf demurrage, but also (1) the fixed costs (i.e., initial receiving and delivery expense) per ton, (2) the variable costs for floor space per 30 days, and (3) the overheads per 30-day period. With the density of a commodity known a knowledge of the above costs permits of the determination of the cost for any given commodity for any given length of storage period.

Schedule F. This schedule serves to assign the expenses to the various miscellaneous services such as car loading, car unloading, weighing, etc. The schedule may be made to cover as many services as are offered by the port.

NOTE: Since the services rendered and wharf units operated differ for every port and terminal, the Formula as reproduced herein must necessarily be expanded or adjusted somewhat to fit each particular case. This was accomplished in the Commission study by using large, ruled, loose-leaf sheets to which the necessary headings were added in either typewritten or pencil form as was convenient.

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SUMMARY OF
TOTAL COSTS AND UNIT COSTS FOR EACH TARIFF SERVICE PLUS A COMPARISON WITH THE CORRESPONDING REVENUES
(Based on Traffic Handled and Expenses Incurred During the Accounting Period)

Summary Schedule
Sheet 1 of 2 sheets

Line No.	TARIFF SERVICES (a)	COSTS FROM (b)	ANNUAL COST Total (c)	ANNUAL COST Per Ton 1/ (d)	ANNUAL REVENUES Total (e)	ANNUAL REVENUES Per Ton 1/ (f)	Line No.
	I TERMINAL SERVICES						
	Dockage						
1	Total Annual Cost	Sched. B, Col. (e), line 86		xxx		xxx	1
2	Cost per "12-hour berth occupancy"	Sched. B, Col. (e), line 87		xxx		xxx	2
	Tolls						
3	a. Total-All Cargo	Sched. C, Col. (c), lines 37 & 39					3
4	b. Cargo Loaded or Discharged by Pipe Line	Sched. C, Cols. (e) & (f), line 37					4
5	c. Bulk Cargo Handled Direct to/from Rail Cars	Sched. C, Cols. (g) & (h), line 37					5
6	d. General Cargo	Sched. C, Cols. (i) & (j), line 37					6
	Service Charges (Clerking Cargo)						
7	a. Total-All Cargo	Sched. D, Col. (c), lines 34 & 36					7
8	b. Cargo Loaded or Discharged by Pipe Line	Sched. D, Cols. (e) & (f), line 34					8
9	c. Bulk Cargo Handled Direct to/from Rail Cars	Sched. D, Cols. (g) & (h), line 34					9
10	d. General Cargo Handled Direct to/from Rail Cars	Sched. D, Cols. (i) & (j), line 34					10
11	e. General Cargo Moving Through Sheds	Sched. D, Cols. (k) & (l), line 34					11
	Wharf Demurrage						
12	a. Total-All Cargo	Sched. E, Col. (c), line 42		xxx		xxx	12
	b. Fixed Costs Per Ton (average)						
13	1. Total-Excluding High Piling	Sched. E, Col. (i), line 40	xxx		xxx	xxx	13
14	2. High Piling Costs (average)	Sched. E, Col. (e), line 46	xxx		xxx	xxx	14
	c. Variable Costs						
15	1. Overhead per ton per 30 days	Sched. E, Col. (o), line 40	xxx	2/	xxx	xxx	15
16	2. Floor space costs per sq. ft. per 30 days	Sched. E, Col. (m), line 40	xxx	3/	xxx	xxx	16
	Miscellaneous Terminal Services						
17	Car Loading	Sched. F, Col. (e), lines 48 & 49					17
18	Car Unloading	Sched. F, Col. (f), lines 48 & 49					18
19	Weighing	Sched. F, Col. (g), lines 48 & 49					19
20	Stencilling	Sched. F, Col. (h), lines 48 & 49		/hr.		/hr.	20
21	Recoopering	Sched. F, Col. (i), lines 48 & 49		/hr.		/hr.	21
22	Labor Sold (Cost Plus - Hourly Basis)	Sched. F, Col. (j), lines 48 & 49		/hr.		/hr.	22
23	Handling Lines	Sched. F, Col. (k), lines 48 & 49		/hr.		/hr.	23
24	Other	Sched. F, Col. (l), lines 48 & 49		/hr.		/hr.	24
25	Total Miscellaneous			xxx		xxx	25
	Rentals			Per Sq. Ft. Per 30 Days		Per Sq. Ft. Per 30 Days	
26	Steamship and Other Office Rentals 4/	Sched. B, Col. (j), line 92					26
27	Pier Rentals 5/	-	xxx	xxx		xxx	27
28	Land Rentals	6/					28
29	Total Rentals	-		xxx		xxx	29
30	Total-Terminal Services (Sum of lines 1, 3, 7, 12, 25, and 29)			xxx		xxx	30

SUMMARY OF

TOTAL COSTS AND UNIT COSTS FOR EACH TARIFF SERVICE PLUS A COMPARISON WITH THE CORRESPONDING REVENUES

(Based on Traffic Handled and Expenses Incurred During the Accounting Period)

Summary Schedule
Sheet 2 of 2 sheets

Line No.	TARIFF SERVICES (a)	COSTS FROM (b)	ANNUAL COST Total (c)	ANNUAL COST Per Ton 1/ (d)	ANNUAL REVENUE Total (e)	ANNUAL REVENUE Per Ton 1/ (f)	Line No.
	II NON-TERMINAL OPERATIONS 7/ (May be Omitted)						
31	Warehousing (Domestic)	Sched. B, Col. (1), line 59		xxx		xxx	31
32	Producing Power Sold	Sched. B, Col. (1), line 60		xxx		xxx	32
33	Grain Elevators	Sched. B, Col. (1), line 61		xxx		xxx	33
34	Stevedoring	Sched. B, Col. (1), line 62		xxx		xxx	34
35	Terminal Railroad Operations	Sched. B, Col. (1), line 63		xxx		xxx	35
36	Other Operations	Sched. B, Col. (1), line 64		xxx		xxx	36
37	Total--Non-Terminal Operations	-		xxx		xxx	37
38	III GRAND TOTAL-REVENUES (Lines 30 and 37)	-					38

NOTE: This schedule serves to summarize the results developed herein. The degree to which the items of expense are broken down by classes of tonnage will depend upon the purpose of the study. In the study made by the Railroad Commission of California, Case No. 4090, it was found necessary to carry out the complete breakdown for rate making purposes.

This formula assumes that the carrying charges upon waterways and piers and wharf structures are fundamentally assignable on the one hand to the vessel in the form of dockage and, on the other hand, to the cargo in the form of tolls (or wharf demurrage if held beyond the free time). This study is not concerned with the fact that some part of the costs assigned herein to dockage or to tolls may ultimately be embraced in pier rentals, service charges, etc., which the port or terminal assesses. This latter is a problem of rate making. The costs, when once found, upon the basis set forth herein can readily be converted into these other units to fit the pricing system of each individual port or terminal. After such conversion, however, the comparability of the costs as between different ports or terminals is, of course, destroyed.

1/ Costs are per ton except as otherwise indicated.

2/ Per ton per 30 days.

3/ Per square foot per 30 days. (Cost is after adjustment for aisle space, etc.).

4/ Costs per square foot per month equal cost per square foot from Schedule B, column (j), line 92, divided by 12. Multiply by the square feet of rental areas to obtain total cost.

5/ No costs are shown for Pier Rentals inasmuch as all pier and waterway expenses involved (except those for office rentals) have been charged, first, against the vessel in the form of dockage, and second, against the cargo in the form of tolls and wharf demurrage. If pier rentals are also charged against the steamship lines, such revenues constitute, in effect, added dockage revenues. (They may also permit of the tariff charges in the form of dockage against the vessel and even of tolls against the cargo being lower than would otherwise be the case).

6/ Develop costs from Schedule B, column (k), line 86, which shows total annual cost for carrying land areas not directly used in cargo handling.

7/ The inclusion of these items is not pertinent to a terminal cost study nor to uniform cost accounting. They are shown here for the reason that most ports and terminals engage in some operations which are not strictly terminal services and their inclusion here permits of a full accounting of the grand total revenues and expenses, if such is desired.

CARRYING CHARGES ON WATERWAYS, STRUCTURES, AND OTHER PLANT FACILITIES

SEPARATED AS BETWEEN WATERWAYS, APRONS, PIERS, AND OTHER AREAS AND FACILITIES

Schedule A
Sheet 1 of 1

Line No.	Acct. No. (a)	ITEM (b)	Expenses (c)	APPORTIONMENT FACTORS 1/ (d)	Water-ways (e)	APRONS Unit No. 1 (f)	APRONS Unit No. 2 (g)	TRANSIT SHEDS 2/ Unit No. 1 (h)	TRANSIT SHEDS 2/ Unit No. 2 (i)	Trackage Facilities 3/ (j)	Roadway and Truck Areas 4/ (k)	Other Areas and Facilities 4/ (l)	Line No.
		I CARRYING CHARGES - WATERWAYS & STRUCTURES											
1	101	Superintendence		Accts. 101,106,108 and 110									1
2	102	Engineering		Acct. 101									2
3	103	Dredging		Direct		xxx	xxx	xxx	xxx	xxx	xxx	xxx	3
4	104	Maint. Wharves & Substructures		Direct 5/						xxx	xxx		4
5	105	Depr. Wharves & Substructures		Direct 5/						xxx	xxx		5
6	106	Maint. Transit Sheds		Direct	xxx	xxx	xxx			xxx	xxx		6
7	107	Depr. Transit Sheds		Direct	xxx	xxx	xxx			xxx	xxx		7
8	108	Maint. Trackage Facilities		Direct	xxx	xxx	xxx	xxx	xxx		xxx	xxx	8
9	109	Depr. Trackage Facilities		Direct	xxx	xxx	xxx	xxx	xxx		xxx	xxx	9
10	110	Maint. Roadway & Truck Areas		Direct	xxx	xxx	xxx	xxx	xxx	xxx		xxx	10
11	111	Depr. Roadway & Truck Areas		Direct	xxx	xxx	xxx	xxx	xxx	xxx		xxx	11
12	112	Insurance on Structures 6/		Direct, or Coverage	xxx					xxx	xxx		12
13	113	Maint. Fire Equipment		Floor Area of Structures	xxx					xxx	xxx		13
14	114	Depr. Fire Equipment		Floor Area of Structures	xxx					xxx	xxx		14
15	115	Stationery & Printing		Acct. 101									15
16	116-1	Taxes on Structures & Facilities		Assessed Val.or Flr Area 7/	xxx								16
17	117-1	Rentals Paid on Struct. & Fac.		Direct, or Floor Area	xxx								17
18		Return on Struct. & Fac. at ____%		Value, or Floor Area	xxx								18
19		Total Carrying Chgs.-Structures		-									19
		I CARRYING CHARGES ON LAND											
20	116-2	Taxes on Land		Ground Area 8/									20
21	117-2	Rentals Paid on Land		Direct, or Ground Area									21
22		Return on Land at ____%		Ground Area									22
23		Total Carrying Chgs - Land		-									23
24		GRAND TOTAL (Lines 19 and 23)		-									24

NOTE: The carrying charges, as the term is here used, includes maintenance, depreciation, insurance, taxes, and a return upon the investment. While this form provides for only two wharf units, as many sheets may be added to Schedule A (and the following schedules) as are necessary to account for all wharf and pier units pertinent to the study (see columns (f) and (g), and (h) and (i), respectively). If the straight line method of depreciation is used, compute the return upon the depreciated value of the property used and useful. If the sinking fund method of depreciation is used, compute the return upon the original cost of the property used and useful, but before depreciation.

1/ Apportionment factors on this and subsequent schedules should be used only in the absence of data permitting direct assignment. The distribution is intended to reflect as nearly as practicable the expense properly chargeable to each facility listed.

2/ The term "shed" is here intended to mean the superstructure plus that portion of the substructure which it covers. The remainder is assignable to aprons. A further subdivision of columns (h) and (i) to reflect the substructure and superstructure separately may be made, if desired, to facilitate the accumulation of the costs. The values should be combined for treatment in Schedule B.

3/ Do not include trackage or roadway facilities which are an integral part of the wharf structures. In such case the charges are assigned to the structure.

4/ Embraces all remaining areas used and useful in the provision of the port or terminal service such as fire stations, storage areas, shops, etc., but which are not directly revenue producing.

5/ Assign expense for fender line to waterways (for subsequent inclusion in dockage charges). Estimate on best basis available. Assign remaining expenses for wharves and substructure direct to apron and transit-shed areas, respectively. If direct distribution not available, allocate on basis of floor area in each (or per coverage in case of insurance).

6/ For insurance on cargo (in transit or demurrage) see Schedule B.

7/ Allocate in proportion to the assessed valuation of each structure. Where taxes are assignable to full units including substructure and shed, assign taxes to each on basis of original cost and allocate taxes on substructure to apron on basis of area.

8/ Allocate in proportion to the area upon which each facility rests, waterways, structures, roadways, etc.

SEPARATION OF EXPENSES BETWEEN DOCKAGE, TOLLS, SERVICE CHARGES, WHARF DEMURRAGE, ETC.

Schedule B
Sheet 1 of 5 sheets

Acct. No. (a)	ITEM (b)	Expenses (c)	APPORTIONMENT FACTORS 1/ (d)	Dockage 2/ (e)	Tolls 3/ (f)	Service Charges 4/ (g)	Wharf Demurrage 5/ (h)	Misc. Terminal Services 6/ (i)	OFFICES AND OTHER AREAS 7/ Shed Space (j)	OFFICES AND OTHER AREAS 7/ Land Areas (k)	Non-Terminal Operations 8/ (l)	Line No.
	I CARRYING CHARGES - WATERWAYS & STRUCTURES (from Sched. A line 19)											
	Waterways (Col. e)		Direct 9/		xxx	xxx	xxx	xxx	xxx	xxx		1
	Apron - Unit No. 1 (Col. f)		Use made 9/			xxx	xxx	xxx	xxx	xxx		2
	Apron - Unit No. 2 (Col. g)		Use made 9/			xxx	xxx	xxx	xxx	xxx		3
	Shed - Unit No. 1 (Col. h)		Use made 9/			xxx				xxx	xxx	4
	Shed - Unit No. 2 (Col. i)		Use made 9/			xxx				xxx	xxx	5
	Trackage Facilities (Col. j)		Tolls 100% 9/	xxx		xxx	xxx	xxx	xxx	xxx	xxx	6
	Roadway Areas (Col. k)		Tolls 100% 9/	xxx		xxx	xxx	xxx	xxx	xxx	xxx	7
	Other Facilities (Col. l)		Direct 10/			xxx						8
	Total Carrying Charges - Waterways & Structures (Lines 1-8 Incl.)		-			xxx						9
	I CARRYING CHARGES - LAND (from Sched. A line 24)											
	Land - Waterways (Col. e)		Direct 9/		xxx	xxx	xxx	xxx	xxx	xxx		10
	Land - Apron Unit No. 1 (col. f)		Use made 9/			xxx	xxx	xxx	xxx	xxx		11
	Land - Apron Unit No. 2 (Col. g)		Use made 9/			xxx	xxx	xxx	xxx	xxx		12
	Land - Shed Unit No. 1 (col. h)		Use made 9/			xxx				xxx	xxx	13
	Land - Shed Unit No. 2 (col. i)		Use made 9/			xxx				xxx	xxx	14
	Land - Trackage Facilities (col. j)		Tolls 100% 9/	xxx		xxx	xxx	xxx	xxx	xxx	xxx	15
	Land - Road Areas (col. k)		Tolls 100% 9/	xxx		xxx	xxx	xxx	xxx	xxx	xxx	16
	Land - Other Facilities (col. l)		Direct 10/			xxx						17
	Total Charges - Land, (Lines 10-17, inclusive)		-			xxx						18
	II DOCK OPERATION											
151	Superintendence		Accts. 152-182, incl.									19
	(Clerking)											
152-1	Checking Cargo (to/from vessel) 11/		Direct	xxx	xxx		xxx	xxx	xxx	xxx	xxx	20
152-2	Checking Cargo (to/from shipper) 11/		Direct	xxx	xxx		xxx	xxx	xxx	xxx	xxx	21
152-3	Checking Cargo (to/from demurrage) 12/		Direct	xxx	xxx	xxx		xxx	xxx	xxx	xxx	22
152-4	Checking (Acct. car loading)		Direct 13/	xxx	xxx				xxx	xxx	xxx	23
152-5	Checking (Acct. Car Unloading)		Direct 13/	xxx	xxx				xxx	xxx	xxx	24
152-6	Checking - Other		Direct	xxx	xxx				xxx	xxx	xxx	25
153	Making out Ship's Papers 14/		Direct	xxx	xxx		xxx	xxx	xxx	xxx	xxx	26
	(Dock Labor)											
171	Assembling Cargo for Vessel's acct.		Direct	xxx	xxx		xxx	xxx	xxx	xxx	xxx	27
172	Car loading		Direct	xxx	xxx	xxx	xxx		xxx	xxx	xxx	28
173	Car unloading		Direct	xxx	xxx	xxx	xxx		xxx	xxx	xxx	29
174	Handling High Piling (Acct. - Demurrage)		Direct	xxx	xxx	xxx		xxx	xxx	xxx	xxx	30
175	Handling Lines		Direct	xxx	xxx	xxx	xxx		xxx	xxx	xxx	31
176	Weighing		Direct	xxx	xxx	xxx	xxx		xxx	xxx	xxx	32
177	Stenciling		Direct	xxx	xxx	xxx	xxx		xxx	xxx	xxx	33
178	Recoopering		Direct	xxx	xxx	xxx	xxx		xxx	xxx	xxx	34
179	Misc. Labor (for which cost plus charge assessed)		Direct	xxx	xxx	xxx	xxx		xxx	xxx	xxx	35

(See Sheets 4 and 5 for footnotes).

SEPARATION OF EXPENSES BETWEEN DOCKAGE, TOLLS, SERVICE CHARGES, WHARF DEMURRAGE, ETC.

Schedule B
Sheet 2 of 5 sheets

Acct. No.	ITEM	Expenses	APPORTIONMENT FACTORS 1/	Dockage 2/	Tolls 3/	Service Charges 4/	Wharf Demurrage 5/	Misc. Terminal Services 6/	OFFICES AND OTHER AREAS 7/ Shed Space	OFFICES AND OTHER AREAS 7/ Land Areas	Non-Terminal Operations 8/	Line No.
(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)	(j)	(k)	(l)	
	II DOCK OPERATION (Continued)											
	(Misc. Expenses)											
181	Cleaning sheds & docks		Cleaning Requirements 15/	xxx	xxx					xxx	xxx	36
182	Watchmen		Areas 16/									37
183	Power for dock use		Consumption	xxx	xxx					xxx	xxx	38
184	Power for sale		Direct	xxx	xxx	xxx	xxx	xxx	xxx	xxx		39
185	Water for dock use		Consumption	xxx	xxx					xxx	xxx	40
186	Water for sale		Direct	xxx	xxx	xxx	xxx	xxx	xxx	xxx		41
187	Claims		Direct						xxx	xxx	xxx	42
188	Car Demurrage		Direct 17/	xxx		xxx	xxx		xxx	xxx	xxx	43
189	Absorptions		18/						xxx	xxx	xxx	44
190	Insurance, Cargo		Direct	xxx	xxx				xxx	xxx	xxx	45
191	Insurance, Compensation		Labor allocation						xxx	xxx		46
192	Telephone		Acct. 151									47
193	Stationery & Printing		Acct. 151									48
194	Taxes, Payroll		Accts. 152-182, incl.									49
	(Dock Equipment)											
201	Car loading-Equipment (Supplies, repairs, depr.)		Direct	xxx	xxx	xxx	xxx		xxx	xxx	xxx	50
202	Weighing Equipment (Supplies, repairs, depr.)		Direct	xxx	xxx	xxx	xxx		xxx	xxx	xxx	51
203	High piling Equipment (Supplies, repairs, depr.)		Direct	xxx	xxx			xxx	xxx	xxx	xxx	52
204	Tractors & Trailers (Supplies, repairs, depr.)		Direct	xxx	xxx				xxx	xxx	xxx	53
	(Return at % on Depreciated Value - Dock Equipment)											
	Car Loading Equipment		Direct	xxx	xxx	xxx	xxx		xxx	xxx	xxx	54
	Weighing Equipment		Direct	xxx	xxx	xxx	xxx		xxx	xxx	xxx	55
	High Piling Equipment		Relative Use	xxx	xxx			xxx	xxx	xxx	xxx	56
	Tractors & Trailers Equipment		Relative Use	xxx	xxx				xxx	xxx	xxx	57
	Total Dock Operation (Lines 19-57, inclusive)		-									58
	III OTHER PORT OPERATIONS											
	Warehousing		Direct	xxx	xxx	xxx	xxx	xxx	xxx	xxx		59
	Producing Power sold		Direct	xxx	xxx	xxx	xxx	xxx	xxx	xxx		60
	Grain Elevators		Direct	xxx	xxx	xxx	xxx	xxx	xxx	xxx		61
	Stevedoring		Direct	xxx	xxx	xxx	xxx	xxx	xxx	xxx		62
	Terminal Railroad Operations		Direct	xxx	xxx	xxx	xxx	xxx	xxx	xxx		63
	Other Operations		Direct	xxx	xxx	xxx	xxx	xxx	xxx	xxx		64
	Total-Other Port Operations (Lines 59-64, inclusive)		-	xxx	xxx	xxx	xxx	xxx	xxx	xxx		65

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(See Sheets 4 and 5 for footnotes).

SEPARATION OF EXPENSES BETWEEN DOCKAGE, TOLLS, SERVICE CHARGES, WHARF DEMURRAGE, ETC.

Schedule B
Sheet 3 of 5 sheets

Acct. No. (a)	ITEM (b)	Expenses (c)	APPORTIONMENT FACTORS 1/ (d)	Dockage 2/ (e)	Tolls 3/ (f)	Service Charges 4/ (g)	Wharf Demurrage 5/ (h)	Misc. Terminal Services 6/ (i)	OFFICES AND OTHER AREAS 7/ Shed Space (j)	OFFICES AND OTHER AREAS 7/ Land Areas (k)	Non-Terminal Operations 8/ (l)	Line No.
	IV TRAFFIC EXPENSES 24/											
301	Superintendence		Lines 9, 18, 58 (65) 24/						xxx	xxx		66
302	Solicitation		Lines 9, 18, 58 (65)						xxx	xxx		67
303	Rate Adjustment & Tariff Pub		Lines 9, 18, 58 (65)						xxx	xxx		68
304	Dues & Subscriptions		Lines 9, 18, 58 (65)						xxx	xxx		69
305	Stationery & Printing		Lines 9, 18, 58 (65)						xxx	xxx		70
306	Other Traffic Expense		Lines 9, 18, 58 (65)						xxx	xxx		71
	Total Traffic Expenses (Lines 66-71, inclusive)		-						xxx	xxx		72
	V GENERAL & ADMINISTRATIVE 24/											
351	Salaries & Exp. Gen'l Officers		Lines 9, 18, 58 (65) 24/						xxx	xxx		73
352	Salaries & Exp. Gen'l Ofc Clks		Dir., or Lines 9,18,58(65)19/						xxx	xxx		74
353	Accounting & Billing		Direct, or Acct. 351						xxx	xxx		75
354	Gen'l Ofc Supplies & Expenses		Line 73						xxx	xxx		76
355	Legal Expenses		Lines 9, 18, 58 (65)						xxx	xxx		77
356	Pensions & Relief		Labor Distribution						xxx	xxx		78
357	Insurance, general		Direct or Lines 9,18,58(65)						xxx	xxx		79
358	Stationery & Printing		Lines 9, 18, 58 (65)						xxx	xxx		80
359	Taxes - Office Payroll		Accts. 351-352						xxx	xxx		81
360	Ofc Equipt. (Carrying Chgs) 23/		Accts. 351-352						xxx	xxx		82
	Ofc Space Costs (from line 92)		Accts. 351-352						xxx	xxx		83
	Return on Working Capital 25/		Lines 9, 58 (65)						xxx	xxx		84
	Total-General & Administrative (Lines 73-84, inclusive)		-						xxx	xxx		85
	GRAND TOTAL - EXPENSES (Lines 9,18,58,65,72 and 85)		-									86
	Development of Average Unit Cost 20/											
	Dockage cost per "12-hr berth occupancy" (Line 86 ÷ Line 88)		-		xxx	xxx	xxx	xxx	xxx	xxx	xxx	87
	Statistical Items											
	Vessel "12-hr berth occupancies" 21/		-		xxx	xxx	xxx	xxx	xxx	xxx	xxx	88
	Assignment of Shed Area in Square Feet											
	Unit No. 1		-							xxx		89
	Unit No. 2		-							xxx		90
	Total (lines 89,90)		-									91
	Cost Per Square foot-Offices & Other Areas (Lines 9,18,36,37) ÷ Line 91 Col.(j)		-	xxx	xxx	xxx	xxx	xxx		xxx	xxx	92
	Ofc Space Costs 22/ (Area x line 92, col.(j))		-	xxx	xxx	xxx	xxx	xxx		xxx	xxx	93

(See Sheets 4 and 5 for footnotes).

SEPARATION OF EXPENSES BETWEEN DOCKAGE, TOLLS, SERVICE CHARGES, WHARF DEMURRAGE, ETC.

Apportionment factors of this and subsequent schedules should be used only in the absence of data permitting direct assignment. The distribution is intended to reflect as nearly as practicable the expense properly chargeable to each service listed.

For purposes of cost allocations herein the term dockage is defined as follows: "The charge assessed against a vessel and/or watercraft for docking at a wharf, pier, or seawall structure, or moored to a vessel so docked, or coming within a slip, channel, or basin." In other words, dockage is the charge against the vessel for the use of the wharf for purposes of loading and/or discharging its cargo. The vessel is charged with that wharf space necessary for the physical loading or discharging of its cargo. Such space extends from the fender line up to that point at which the vessel's agents (stevedores) physically take possession of or drop the cargo, (i.e., up to but not including the point of rest).

Under certain circumstances the dockage costs, as herein determined, are assessed against the vessel (in whole or in part) in the form of pier rentals or space rentals. Such rentals may increase the burden laid against the vessel and correspondingly lighten the direct burden against the cargo. The reverse may be true. The formula, as here set up, however, merely seeks to determine what the vessel and the cargo ought to pay purely from a cost of service standpoint based upon the respective use each makes of the facility. The ultimate distribution of these costs against the respective users of the service in the form of tariff charges is not a matter of concern to the cost analyst in applying this Formula.

For purposes of cost allocations herein the term tolls is defined as follows: "A toll is the charge for cargo conveyed on, over, or through a terminal facility, or loaded or discharged while the vessel is berthed at a terminal facility." In other words, the toll is the price paid by the cargo for the use of wharf facilities, i.e., sheds, roadways, trackage facilities, etc. The cargo is assumed to compensate in the form of toll for the carrying charges upon the facilities up to the point where the vessel's stevedores physically take possession of the goods for loading purposes, i.e., up to and including point of rest (but excluding areas devoted to wharf demurrage or shipside storage).

Service Charge items embrace clerical, checking and related services rendered for the account of the vessel. Private terminals may embrace items which are different from those included by the vessel operators themselves when the latter, for accounting purposes, segregate these expenses. At the private terminals on San Francisco Bay the term service charge, as defined in their tariffs, is a charge against the vessel for the rendering of the following services:

(1) Arranging berth for vessel.
(2) Arranging cargo space on wharf.
(3) Checking cargo to or from vessel as required.
(4) Receiving outbound cargo from shipper.
(5) Delivering inbound cargo to consignee.
(6) Preparing manifest or tags covering cargo loaded aboard vessel.
(7) Preparing "over," "short," and "damage" reports.
(8) Ordering cars.
(9) Giving information to shippers and consignees regarding cargo, sailing and arrival dates of vessels.
(10) Lighting wharf.

The above definition has been used for purposes of making the cost allocations herein.

5/ Wharf demurrage is defined as that charge accruing upon the cargo left in the possession of the terminal beyond the free time period. The floor space assignable to wharf demurrage (or shipside storage) is based on tests to develop the annual average areas occupied, or held available for such occupancy.

6/ Embraces car loading, car unloading, weighing, stencilling, recoopering, labor sold on cost plus basis, handling lines, etc. Charge these items with the space devoted to the performance of stencilling, recoopering, weighing, etc., and to the storage of equipment used in car loading, unloading, stencilling, weighing, etc.

7/ Embraces remaining shed or open areas used for the general offices or rented to steamship companies, stevedoring companies, outside stencilling companies, etc. Embraces only non-cargo areas.

8/ Assign to Non-Terminal Operations, column (1), any charges not assignable to the revenue producing terminal services listed. Non-terminal operations include stevedoring, terminal railway operations, etc.

9/ The apportionment of the carrying charges for the waterways, aprons, sheds and other parts of the wharf structure, must rest (from the standpoint of cost finding) upon the relative use made of such facility by the vessel on the one hand and the cargo on the other. The principles involved in such separation are too involved for reproduction here. (See Final Report in C.R.C. study, Case 4090, dated May 16, 1936, pages 41-43). The separation made will vary with the type and uses made of the individual structures. The Commission report lists five illustrations of cost separation. The results of illustration No. 5 follow as an example:

Carrying Charges (a)	Vessel Dockage (b)	CARGO Tolls (c)	CARGO Demurrage (d)	Misc. Terminal Services (e)	Offices & Rental Areas (f)	Non-Terminal Operations (g)
a. Water Areas	100%	-	-	-	-	-
b. Apron-Structure & Track	60%	40%	-	-	-	-
c. Apron-Land	87½%	12½%	-	-	-	-
d. Transit Shed, substructure, superstructure & land	12%	68%	20%	-	-	-
e. Remaining Term. Trackage & Roadways	-	100%	-	-	-	-

The above separation was based on several factors not here listed and represents an oversimplification as no charges have been made for offices and rental areas, etc. However, with the fundamental principles stated as to the portions of the facility which are properly chargeable against the vessel and the portions properly chargeable against the cargo, the breakdown for each wharf or pier is readily obtainable. In the Commission study a breakdown was developed separately for each wharf unit at each of the terminal properties subject to the investigation. It is obvious that the fundamental statement of principles for the separation of the charges between vessel and cargo are all-important.

10/ Assign to Tolls, column (f), the charges upon special facilities or areas utilized by pipe lines in the handling of bulk cargoes, including a portion of the substructure supporting the pipe lines. Assign open areas used for bulk storage to wharf demurrage, column (h).

11/ The checking is for the account of the vessel. Hence cost is included in service charge assessed against vessel.

SEPARATION OF EXPENSES BETWEEN DOCKAGE, TOLLS, SERVICE CHARGES, WHARF DEMURRAGE, ETC.

12/ If cargo goes on wharf demurrage the vessel's responsibility is assumed to have ceased. Checking costs thereafter are for the account of the demurrage cargo and included in the demurrage costs.

13/ Where a check is performed on car loading which serves as a count both for the vessel and for the car loading operation, distribute the costs of such check equally between service charges and car loading. Same principle holds for checking for the joint account of car loading and wharf demurrage.

14/ Involves clerical work in making up dock manifests, dock receipts, loading lists, over, short, and damage reports, etc.

15/ A typical distribution developed for a large wharf covered by the Commission's investigation was as follows: Service charges 65 per cent, miscellaneous services 30 per cent, demurrage 5 per cent. The cleaning occasioned by the receipt and delivery of cargo from and to shippers and by the stevedoring operations was assessed against the vessel in the form of service charges. Such distribution was based on an inspection and check of the cleaning chargeable to each service at each structure.

16/ A typical distribution developed by the Commission study for one terminal property was as follows: Dockage 12.5 per cent, toll 27.5 per cent, service charges 30 per cent, demurrage 20 per cent, and miscellaneous services 10 per cent. Such distribution arbitrarily assumed that a given proportion (say 50 per cent) of the watchmen's service was devoted to the protection of the cargo, this to be further distributed between service charges and demurrage on the basis of the average volume (or footage) of in-transit and demurrage tonnage so protected. The remaining proportion of the watchmen's time was considered as devoted to the protection of the structures and apportioned according to the time required to make the rounds of each structure and the use to which each was charged. (See apportionments of Carrying Charges on Structures).

17/ Charge to Car Loading and Unloading, respectively, upon basis of demurrage accrued in each. However, when unloading delays arise from lack of shed space to accommodate rail-borne cargo, charge to toll upon principle that such use of cars constitutes a temporary extension of shed space.

18/ Absorptions of one type or another may be made by ports or terminals (or by a steamship line which operates its own terminal). The purpose is to attract cargo from which revenue may be derived through the provision of one or all of the services which the terminal offers. Allocate costs according to revenues currently received from each service, or, if rates are to be subject to significant adjustments, allocate according to distribution of all other expenses herein.

19/ Assign direct where the time of the clerical staff can be segregated through time studies over test periods. Otherwise apportion on the basis of the directly assigned charges.

20/ Average unit costs can be developed at this point in the study by dividing the appropriate total costs in the respective columns by the total service units appropriate thereto. With the exception of dockage costs, however, such unit costs are of limited use for rate making purposes without further breakdown as provided in subsequent schedules. Even in the case of dockage the average cost (applicable to the hypothetical average vessel) should probably be scaled downward for vessels of less than average net registered tonnage and scaled upward for vessels of greater than average tonnage (see rates of progression developed in C.R.C. study, Final Report, pages 52-55). If desired, the dockage costs as herein derived may be subsequently broken down into two elements for rate making purposes, namely, pier rentals and dockage (the latter being reduced to the degree that the pier rentals absorb part of the expenses). The observation is here made that for local competitive reasons approximately 75 per cent of the costs assigned to dockage at the East Bay terminals (San Francisco Bay) were subsequently added, for rate making purposes, to the service charges assessed against the vessel. This permitted the equalization of the dockage charges with those assessed at competitive ports (see above Report, pages 50, 55-56). Such subsequent treatment of dockage costs for rate making purposes does not influence the application of this formula which yields the costs entirely independent of their subsequent treatment for rate making purposes.

21/ This unit is purely arbitrary and used for purposes of illustration only. On the Pacific Coast vessels are assessed dockage on the basis of 4 hours, 12 hours, or 24 hours, depending upon the port. Dockage for fractions of a period should be counted as a full period, i.e., dockage for each 12 hours or fraction thereof constitutes one "12-hour berth occupancy." The C.R.C. study broke the periods down into 1-hour periods.

22/ State herein the area devoted to General and Administrative offices: _____ square feet.

23/ Add to Account 360 an allowance for _____% return upon the depreciated value of the office equipment. State herein the value used and amount thus added. Depreciated value $_____. Return $_____.

24/ If this overhead includes any work performed on behalf of "Non-Terminal Operations," the expenses must be distributed accordingly. Exclude charges to columns (j) and (k).

25/ State amount of working capital normally required to meet current expenses and obligations over period of _____ weeks $_____. In principle, the allocation of the return upon (i.e., cost of) such working capital should be against those services the provision of which requires such working capital.

SEPARATION OF COSTS ASSIGNABLE TO SHIPPER IN THE FORM OF TOLLS AS BETWEEN
(1) Tonnage Loaded and/or Discharged by Pipe Line,
(2) Bulk Tonnage Handled Direct to or from Rail Car, and
(3) General Cargo Handled Through Transit Sheds.

Schedule C
Sheet 1 of 2 sheets

Line No.	Acct. No.	ITEM	Expenses From Schedule B Column (f)	APPORTIONMENT FACTORS	CARGO LOADED OR DISCHARGED BY PIPE LINE 1/		BULK CARGO HANDLED DIRECT TO/FROM RAIL CARS 2/		GENERAL CARGO 3/		Line No.
					Cost	Cost Per Ton 4/	Cost	Cost Per Ton 5/	Cost	Cost Per Ton 6/	
	(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)	(j)	
		I CARRYING CHARGES-STRUCTURES									
		Apron-Unit No. 1 (line 2)		Relative Use Weighted for tonnage 7/							1
		Apron-Unit No. 2 (line 3)		Rel. Use Weighted for Tonn. 7/							2
		Shed-Unit No. 1 (line 4)		General Cargo 100%	xxx	xxx	xxx	xxx			3
		Shed-Unit No. 2 (line 5)		General Cargo 100%	xxx	xxx	xxx	xxx			4
		Trackage Facilities (line 6)		Tonnage, Direct vs Gen'l Cargo	xxx	xxx					5
		Roadway Areas (line 7)		General Cargo 100%	xxx	xxx	xxx	xxx			6
		Other Facilities (line 8)		Direct 8/							7
		Total-Charges, Structures		-							8
		I CARRYING CHARGES-LAND									
		Apron-Unit No. 1 (line 11)		Tonnage, Pipe Line vs Direct					xxx	xxx	9
		Apron-Unit No. 2 (line 12)		Tonnage, Pipe line vs Direct					xxx	xxx	10
		Shed-Unit No. 1 (line 13)		General Cargo 100%	xxx	xxx	xxx	xxx			11
		Shed-Unit No. 2 (line 14)		General Cargo 100%	xxx	xxx	xxx	xxx			12
		Trackage Facilities (line 15)		Tonnage, Direct vs Gen'l Cargo	xxx	xxx					13
		Roadway Areas (line 16)		General Cargo 100%	xxx	xxx	xxx	xxx			14
		Land-Other Facilities (line 17)		Direct 8/							15
		Total-Charges, Land		-							16
		II DOCK OPERATION									
	151	Superintendence		Line 8, Sched. C							17
	182	Watchmen		Line 8, Sched. C							18
	185	Water for dock use (Fire Prot.)		Line 8, Sched. C							19
	187	Claims		Direct 9/							20
	188	Car Demurrage		Direct; or Tonnage, Direct vs. General	xxx	xxx					21
	189	Absorptions		Direct 10/							22
	191	Insurance, Compensation		Lines 8, 18, Sched. C							23
	192	Telephone		Acct. 151							24
	193	Stationery & Printing		Acct. 151							25
	194	Taxes, Payroll		Lines 8, 18, Sched. C							26
		Total-Dock Operation		-							27
	301-06	III TOTAL TRAFFIC EXPENSES		Tonnage							28

SEPARATION OF COSTS ASSIGNABLE TO SHIPPER IN THE FORM OF TOLLS AS BETWEEN:
(1) Tonnage Loaded and/or Discharged by Pipe Line,
(2) Bulk Tonnage Handled Direct to or from Rail Car, and
(3) General Cargo Handled Through Transit Sheds.

Schedule C
Sheet 2 of 2 sheets

Acct. No. (a)	I T E M (b)	Expenses From Schedule B Column (f) (c)	APPORTIONMENT FACTORS (d)	CARGO LOADED OR DISCHARGED BY PIPE LINE 1/ Cost (e)	CARGO LOADED OR DISCHARGED BY PIPE LINE 1/ Cost Per Ton 4/ (f)	BULK CARGO HANDLED DIRECT TO/FROM RAIL CARS 2/ Cost (g)	BULK CARGO HANDLED DIRECT TO/FROM RAIL CARS 2/ Cost Per Ton 5/ (h)	GENERAL CARGO 3/ Cost (i)	GENERAL CARGO 3/ Cost Per Ton 6/ (j)	Line No.
	IV GENERAL & ADMINISTRATIVE									
351	Sal. & Exp.-General Officers		Tonnage							29
352	Sal. & Exp.-General Office Clerks		Direct, or Tonnage 11/							30
353	Accounting & Billing		Direct, or Tonnage 11/							31
354-59	Other General & Administrative		Tonnage							32
360	Office Equipment		Accts. 352-359							33
	Office Space Costs		Accts. 352-359							34
	Return on Working Capital		Lines 8, 27							35
	Total-General & Administrative		-							36
	GRAND TOTAL - EXPENSE (Lines 8, 16, 27, 28 and 36)		-							37
	Statistical Items									
	Number Tons Loaded & Discharged		-		XXX		XXX		XXX	38
	Over-all Average Cost per Ton (Col. (c) line 37 ÷ line 38)		-	XXX	XXX	XXX	XXX	XXX	XXX	39

NOTE: The Toll is the charge for cargo conveyed on, over, or through a terminal facility or loaded or discharged while the vessel is berthed at a terminal facility. It is a charge, fundamentally, for the use of the wharf facility by the shipper. (The balance of the cost of maintaining the facility is principally laid herein against the vessel in the form of dockage charges). Although the toll is a charge against the cargo, in practice it is assessed against and collected from the steamship companies which, in turn, collect it from the shipper or consignee.

The intent of this schedule is to assign the charges in proportion to the use each of the three classes of cargo noted herein makes of the facilities.

Includes liquids such as petroleum, vegetable oils, etc., loaded and discharged by pipe line. The wharf facilities chargeable to the handling of pipe line cargo are limited to the minimum structure necessary for the boat to tie up plus the pipe line facilities and supports. Most pipe line commodities, particularly petroleum products, are handled at facilities devoted exclusively to this traffic in which case the total charges could be directly assigned to this class of tonnage.

Includes bulk cargoes loaded direct to or from railroad cars on the apron, thus eliminating any use of the transit sheds, roadways, etc. Bulk cargoes include sand, coal, sulphur, salt, etc. The wharf facilities assignable in part to this cargo (the other part being assigned to the vessel) include the apron, plus the trackage thereon. The shed is excluded.

Includes remaining general cargo which customarily makes use of transit shed facilities. No attempt is made to reflect toll charge against occasional general cargo shipments which might be loaded direct to cars. The shed and shed trackage facilities provide a "readiness to serve" this latter traffic and the carrying charges are apportioned to it in common with the tonnage actually moving through the shed.

1/ Column (e) divided by line 38 column (e).

5/ Column (g) divided by line 38 column (g).

6/ Column (i) divided by line 38 column (i).

7/ The C.R.C. study, Case 4090, did not develop any apportionments for structures equipped to simultaneously handle all three classes of cargo although such exist. Based on Illustration No. 5 of the Final Report, Engineering Division, in above Case, a distribution of the apron carrying charges, (when the bulk tonnage loaded direct constituted 25 per cent of the total and the general cargo (shed tonnage) constituted 75 per cent) would be 37 per cent vs. 63 per cent. (17.5 ÷ 47.5) x 100 = 37% and (30.0 ÷ 47.5) x 100 = 63%. (See page 39 of Report).

8/ Assign charges on special pipe line facilities, including share of substructure necessary to carry pipe lines, to column (e). See footnote 10/, Schedule B.

9/ Analyze claims for test period and assign in accordance with the class of tonnage responsible.

10/ Assign to class or classes of cargo responsible for the absorptions, or assign in proportion to the relative amount of gross revenue yielded by each class of tonnage.

11/ Pipe line tonnage commonly requires less clerical, accounting, billing, and similar overhead expenses per ton than does either bulk cargo or general cargo. This can only be reflected in the costs assignable to each class of tonnage by assigning the clerical costs direct to each class of tonnage. Such assignment probably will require an analysis of the clerical time, or a time study over a test period.

SEPARATION OF "SERVICE CHARGE" EXPENSES (CLERKING CARGO) BETWEEN
(1) Cargo Loaded or Discharged by Pipe Line,
(2) Bulk Cargo Handled Direct to or from Rail Cars,
(3) General Cargo Handled Direct to or from Rail Cars, and
(4) General Cargo Moving Through Transit Sheds.

Schedule D
Sheet 1 of 2 sheets

Line No.	Acct. No.	I T E M	Expenses from Schedule B Column (g)	APPORTIONMENT FACTORS	CARGO LOADED OR DISCHARGED BY PIPE LINE		BULK CARGO HANDLED DIRECT TO/FROM RAIL CARS		GENERAL CARGO HANDLED DIRECT TO/FROM RAIL CARS		GENERAL CARGO MOVING THROUGH SHED		Line No.
					Cost	Cost Per Ton 1/	Cost	Cost Per Ton 2/	Cost	Cost Per Ton 3/	Cost	Cost Per Ton 4/	
	(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)	(j)	(k)	(l)	
		II DOCK OPERATION											
1	151	Superintendence		Accts. 152-204									1
		(Clerking)											
2	152-1	Checking Cargo (to/from vessel)		Dir. or weighted tonnage 5/									2
3	152-2	Checking Cargo (to/from shipper)		Dir. or weighted tonnage 5/									3
4	152-4	Checking Acct. Car Loading		Shed Cargo 100%	xxx	xxx	xxx	xxx	xxx	xxx			4
5	152-5	Checking Acct. Car Unloading		Shed Cargo 100%	xxx	xxx	xxx	xxx	xxx	xxx			5
6	153	Making out Ship's Papers		Dir. or weighted tonnage 6/									6
		(Dock Labor)											
7	171	Assembling cargo for vessel's acct.		Shed Cargo 100%	xxx	xxx	xxx	xxx	xxx	xxx			7
		(Misc. Expenses)											
8	181	Cleaning Sheds & Docks)		Shed Portion-Direct	xxx	xxx	xxx	xxx	xxx	xxx			8
8a		)		Apron Portion - Tonnage	xxx	xxx							8a
9	182	Watchmen		Shed Cargo 100% 7/	xxx	xxx	xxx	xxx	xxx	xxx			9
10	183	Power for Dock Use (Lights))		Shed lights-Direct	xxx	xxx	xxx	xxx	xxx	xxx			10
11		)		Apron lights-Tonnage									11
12	185	Water for Dock Use		Acct. 181	xxx	xxx							12
13	187	Claims		Direct 8/									13
14	189	Absorptions		Direct 9/									14
15	190	Insurance, Cargo		Direct 10/									15
16	191	Insurance, Compensation		Accts. 152-182									16
17	192	Telephone		Acct. 151									17
18	193	Stationery & Printing		Acct. 151									18
19	194	Taxes, Payroll		Accts. 152-182									19
		(Dock Equipment)											
20	203	High Piling Equipment		Shed Cargo 100%	xxx	xxx	xxx	xxx	xxx	xxx			20
21	204	Tractors and Trailers		Shed Cargo 100%	xxx	xxx	xxx	xxx	xxx	xxx			21
		(Return Dock Equipment)											
22		High Piling Equipment		Shed Cargo 100%	xxx	xxx	xxx	xxx	xxx	xxx			22
23		Tractor & Trailer Equipment		Shed Cargo 100%	xxx	xxx	xxx	xxx	xxx	xxx			23
24		Total Dock Operation		-									24
25	301-06	IV TRAFFIC EXPENSES - TOTAL		Weighted Tonnage 11/									25

NOTE: The average over-all cost per ton for the performance of the "Service Charge" (clerking) functions may be simply obtained by dividing the total of column (e) by the total tons handled. Such average value fails, however, to reflect the fact that the checking, clerical and other services rendered certain movements differ substantially from those rendered other movements. For example, the checking cost assignable to general cargo handled through a transit shed is much greater per ton than that assignable to a ton of petroleum moving through a pipe line. The purpose of Schedule E is to permit of a further breakdown of the elements of service for the purpose of more closely associating the cost of each with that class of cargo which requires it. (See C.R.C. Report, Chapter VI).

SEPARATION OF "SERVICE CHARGE" EXPENSES (CLERKING CARGO) BETWEEN
(1) Cargo Loaded or Discharged by Pipe Line,
(2) Bulk Cargo Handled Direct to or from Rail Cars,
(3) General Cargo Handled Direct to or from Rail Ca and
(4) General Cargo Moving Through Transit Sheds.

Schedule D
Sheet 2 of 2 sheets

Line No.	Acct. No.	ITEM	Expenses from Schedule B Column (g)	APPORTIONMENT FACTORS	CARGO LOADED OR DISCHARGED BY PIPE LINE		BULK CARGO HANDLED DIRECT TO/FROM RAIL CARS		GENERAL CARGO HANDLED DIRECT TO/FROM RAIL CARS		GENERAL CARGO MOVING THROUGH SHED		Line No.
					Cost	Cost Per Ton 1/	Cost	Cost Per Ton 2/	Cost	Cost Per Ton 3/	Cost	Cost Per Ton 4/	
	(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)	(j)	(k)	(l)	
		V GENERAL & ADMINISTRATIVE											
26	351	Sal. & Exp. Gen'l Officers.....		Acct. 151, or direct 12/									26
27	352	Sal. & Exp. Gen'l Office Clerks...		Acct. 151, or direct 12/									27
28	353	Accounting & Billing.....		Acct. 151, or direct 12/									28
29	354-59	Other General & Administrative....		Acct. 151, or direct 12/									29
30	360	Office Equipment.....		Acct. 151, or direct 12/									30
31		Office Space Costs.....		Acct. 151, or direct 12/									31
32		Return on Working Capital.....		Acct. 151									32
33		Total General & Administrative....		- 0									33
34		GRAND TOTAL - EXPENSE..... (Lines 24, 25, 33)		-									34
		Statistical Items											
35		Tons loaded & discharged.....		-		XXX		XXX		XXX		XXX	35
36		Average Cost all tonnage..... (Col.(c)line 34 ÷ line 35)		-		XXX	XXX	XXX	XXX	XXX	XXX	XXX	36

1/ Column (e) divided by tons shown line 35, column (e).

Column (g) divided by tons shown line 35, column (g).

Column (i) divided by tons shown line 35, column (i).

Column (k) divided by tons shown line 35, column (k).

The Commission's study developed the following weights (per ton) to be applied in the distribution of checking costs: bulk cargo loaded direct 0.25, general cargo loaded direct 0.50, and general cargo moved through shed 1.0. No weighting was developed for pipe line tonnage but it would presumably be as low as or lower than that for bulk cargo loaded direct. (A weight of 0.25 for bulk cargo loaded direct means that the checking cost per ton on this movement is 25 per cent of the checking cost per ton incurred on general cargo moved through the shed).

The Commission's study developed the following weights: bulk cargo loaded direct 15 per cent, general cargo loaded direct 30 per cent, general cargo moved through sheds 100 per cent. No weighting was developed for pipe line tonnage.

The expense for watchmen allocated to service charges embraces cargo protection only and hence would normally be chargeable entirely against shed cargo.

Assign direct to the class of cargo occasioning claims. If the losses per ton for some individual commodity or group of commodities within a class differ significantly from the average, assign the claims for such to the commodity in question by means of subsequent adjustment to the study, at the same time reducing the charges to the remaining tonnage in that class.

9/ Apportion on basis of relative gross revenue derived from each class of cargo listed. (If no absorptions are made on certain classes of tonnage, omit charges accordingly).

10/ Apportion according to the nature of the insurance protection carried on each class of cargo.

11/ The Commission's study developed the following arbitrary weights: bulk cargo loaded direct 0.20, general cargo loaded direct 1.0, and general cargo moving through sheds 1.0. No weighting was developed for pipe line tonnage. The reduced value for bulk cargo loaded direct was based on an estimate for the particular terminals under study. It gives recognition to the fact that bulk cargo handled in large lot shipments ranging from several hundred to several thousand tons per shipment requires less solicitation and other traffic expense per ton than does the average general merchandise cargo.

12/ Apportionments based on Account 151 assume that the overhead administrative and accounting costs per ton vary as between the four classes of tonnage in the same proportion as do the costs for checking and other services performed on the dock. An alternative is to develop the relative costs per ton for each class by special tests or time studies applied to the routine office clerical work.

BREAKDOWN OF WHARF DEMURRAGE COSTS INTO
(1) The Fixed Costs per Ton (i.e., Receiving and Delivery Expense), and
(2) The Variable Expense (i.e., the Floor Space Costs and Overheads, both of which vary with the Period of Storage).

Schedule E
Sheet 1 of 2 sheets

Acct. No. (a)	I T E M (b)	Expenses from Schedule B Column (h) (c)	APPORTIONMENT FACTORS (d)	(1) FIXED COSTS: LABOR HANDLING High Piling (e)	LABOR HANDLING Other 1/ (f)	Checking (g)	Non-Variable Ovh'd (h)	Sub-total Cols. (f)+(g)+(h) (i)	Cost/Ton Excl. High Pile 2/ (j)	(2) VARIABLE COSTS: Floor Space Costs (k)	Initial Space Cost/sq.ft. 3/ (l)	Adj'd. Space Cost/sq.ft./30 days 4/ (m)	Variable Overhead (n)	Adj'd Costs/Ton/30 da. 5/ (o)	Line No.
	I CARRYING CHARGES-STRUCTURES														
	Shed Unit No. 1		Direct	xxx	xxx	xxx	xxx	xxx	xxx				xxx	xxx	1
	Shed Unit No. 2		Direct	xxx	xxx	xxx	xxx	xxx	xxx				xxx	xxx	2
	Other Facilities		Direct	xxx	xxx	xxx	xxx	xxx	xxx				xxx	xxx	3
	Total-Carrying Charges-Structures		-	xxx	xxx	xxx	xxx	xxx	xxx				xxx	xxx	4
	I CARRYING CHARGES-LAND														
	Shed Unit No. 1		Direct	xxx	xxx	xxx	xxx	xxx	xxx				xxx	xxx	5
	Shed Unit No. 2		Direct	xxx	xxx	xxx	xxx	xxx	xxx				xxx	xxx	6
	Other Facilities		Direct	xxx	xxx	xxx	xxx	xxx	xxx				xxx	xxx	7
	Total-Carrying Charges-Land		-	xxx	xxx	xxx	xxx	xxx	xxx				xxx	xxx	8
	II DOCK OPERATION														
151	Superintendence		Acct. 152-182 incl.				xxx			xxx	xxx	xxx			9
152-3	Checking (to/from Demurrage)		Direct	xxx	xxx		xxx			xxx	xxx	xxx	xxx	xxx	10
152-4	Checking (Acct. Car Loading) 6/		Direct	xxx	xxx		xxx			xxx	xxx	xxx	xxx	xxx	11
152-5	Checking (Acct. Car Unloading) 6/		Direct	xxx	xxx		xxx			xxx	xxx	xxx	xxx	xxx	12
174	Handling & High Pil. (a) High Piling		Direct		xxx	xxx	xxx	xxx		xxx	xxx	xxx	xxx	xxx	13
	(b) Other		Direct	xxx		xxx	xxx			xxx	xxx	xxx	xxx	xxx	14
181	Cleaning Sheds		Direct	xxx	xxx	xxx	xxx	xxx		xxx	xxx	xxx			15
182	Watchmen		Direct	xxx	xxx	xxx	xxx	xxx		xxx	xxx	xxx			16
183	Power for dock use		Direct	xxx	xxx	xxx	xxx	xxx		xxx	xxx	xxx			17
185	Water for dock use		Direct	xxx	xxx	xxx	xxx	xxx		xxx	xxx	xxx			18
187	Claims		Direct	xxx	xxx	xxx	xxx	xxx		xxx	xxx	xxx			19
189	Absorptions		Direct	xxx	xxx	xxx	xxx	xxx		xxx	xxx	xxx			20
190	Insurance, Cargo		Direct	xxx	xxx	xxx	xxx	xxx		xxx	xxx	xxx			21
191	Insurance, Compensation		Accts. 152-182, incl.				xxx			xxx	xxx	xxx			22
192	Telephone		Direct	xxx	xxx	xxx	xxx	xxx		xxx	xxx	xxx			23
193	Stationery & Printing		Direct	xxx	xxx	xxx	xxx	xxx		xxx	xxx	xxx			24
194	Taxes, Payroll		Accts. 152-182, incl.				xxx			xxx	xxx	xxx			25
203	High Piling Equipment		Direct		xxx	xxx	xxx	xxx		xxx	xxx	xxx	xxx	xxx	26
204	Tractors & Trailers		Direct per Use			xxx	xxx			xxx	xxx	xxx	xxx	xxx	27
	Total-Dock Operation		-				xxx			xxx	xxx	xxx			28
	IV TRAFFIC EXPENSES														
303	Rate Adjustment & Tariff Pub.		Direct	xxx	xxx	xxx				xxx	xxx	xxx	xxx	xxx	29
	All other Traffic Expenses		Direct	xxx	xxx	xxx	xxx	xxx		xxx	xxx	xxx			30
	Total-Traffic Expense		-	xxx	xxx	xxx				xxx	xxx	xxx			31
	V GENERAL & ADMINISTRATIVE														
351	Sal. & Exp. General Officers		Fixed Cost-50%; Variable-50%	xxx	xxx	xxx				xxx	xxx	xxx			32
352	Sal. & Exp. General Office Clerks		Fixed Cost-50%; Variable-50%	xxx	xxx	xxx				xxx	xxx	xxx			33
353	Accounting & Billing		Direct	xxx	xxx	xxx				xxx	xxx	xxx	xxx	xxx	34
354-59	Other General & Administrative		Fixed Cost-50%; Variable-50%	xxx	xxx	xxx				xxx	xxx	xxx			35

BREAKDOWN OF WHARF DEMURRAGE COSTS INTO
(1) The Fixed Costs per Ton (i.e., Receiving and Delivery Expense), and
(2) The Variable Expense (i.e., the Floor Space Costs and Overheads, both of which vary with the Period of Storage).

Schedule E
Sheet 2 of 2 sheets

Line No.	Acct. No.	I T E M	Expenses from Schedule B Column (h)	APPORTIONMENT FACTORS	(1) FIXED COSTS						(2) VARIABLE COSTS					Line No.
					LABOR HANDLING											
					High Piling	Other 1/	Checking	Non-Variable Ovh'd	Subtotal Cols. (f)+(g) + (h)	Cost/Ton Excl. High Pil.2/	Floor Space Costs	Initial Space Cost/ sq.ft. 3/	Adj'd. Space Cost/ sq.ft./30 days 4/	Variable Overhead	Ovh'd Costs/ Ton/ 30 da. 5/	
	(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)	(j)	(k)	(l)	(m)	(n)	(o)	
		V GENERAL & ADMINISTRATIVE (Cont'd)														
36	360	Office Equipment.....		Fixed Cost-50%; Variable-50%	xxx	xxx	xxx				xxx	xxx	xxx			36
37		Office Space Costs.....		Fixed Cost-50%; Variable-50%	xxx	xxx	xxx				xxx	xxx	xxx			37
38		Return on Working Capital.....		Lines 4,28,31,32-37.												38
39		Total-General & Administrative.....		-												39
40		GRAND TOTAL EXPENSE, Excluding High Piling (Lines 4,8,28,31,39)7/		-	xxx											40
41		High Piling Expense 8/.....		-		xxx	xxx	xxx	xxx	xxx	xxx	xxx	xxx	xxx	xxx	41
42		GRAND TOTAL EXPENSE, Including High Piling (Lines 40 and 41).....		-												42
		(Statistical Items)	Item													
43		Total tons Received on Wharf Dem...		-	xxx	xxx	xxx	xxx	xxx	xxx	xxx	xxx	xxx	xxx	xxx	43
44		Total Ton-Months of Storage.....		-	xxx	xxx	xxx	xxx	xxx	xxx	xxx	xxx	xxx	xxx	xxx	44
45		Tons Receiving High Piling.....		-		xxx	xxx	xxx	xxx	xxx	xxx	xxx	xxx	xxx	xxx	45
46		Avg. Cost/Ton-High Piling 8/.....		-		xxx	xxx	xxx	xxx	xxx	xxx	xxx	xxx	xxx	xxx	46

NOTE: Demurrage rates are fundamentally built up of two elements, the first being the initial receiving and delivery costs which are independent of the length of the storage period (herein referred to as the fixed costs), and the second being the variable costs which are proportional to the length of the storage period. (See Commission study, Chapter VIII). The first element includes the cost of checking to and from consignee, the cost of physical handling (i.e., high piling and breaking down, or, where no high piling is involved, at least the labor costs for moving, shifting, assembling), and certain minimum overhead costs for accounting, billing, etc. The second element includes the floor space costs, watchmen, insurance, and certain office overheads, all of which are in proportion to the length of time a shipment remains in storage. Where a shipment remains a short period, high piling is not warranted even though the space costs are increased thereby. On long time storage it becomes more economical to high pile as the saving in space costs offsets the labor expense in high piling. Some commodities, because of their nature, are never high piled. Others are high piled regularly. The operator should be in a position to determine for any given commodity which is the most efficient method of handling for any given period of storage. The formula develops the alternative costs for either one tier piling or high piling (recognizing the higher labor cost but reduced floor space cost for the latter as compared to the former).

Schedule E serves to develop the receiving and delivery costs (i.e., the fixed costs) per ton, the floor space costs per square foot per 30 days, and the variable overhead costs per ton per 30 days. There only remains to be obtained the square feet required per ton for the individual commodities for (a) one-tier piling, (b) high piling (see Commission study, page 98). With the above data available the cost for any given commodity for any length of storage period can be computed both with and without high piling. If one assumes that the commodity is high piled whenever it is economically justifiable to do so, the computation showing the lowest cost for any given storage period would be the relevant cost figure to use (see pages 100-110 of Commission study for illustrations of this analysis of demurrage costs).

1/ Includes all labor costs except high piling, i.e., assembling of broken lots honeycombed by partial deliveries, shifting of demurrage cargo blocked off by other tonnage, etc.

2/ Determined by dividing subtotal in column (i) (which excludes high piling costs) by total tons received on wharf demurrage, column (c), line 43.

3/ Divide column (k) by square feet of area assigned to wharf demurrage (see Schedule B, line 91, column (h)).

4/ The areas initially assigned to wharf demurrage embrace aisle space, working areas, waste space around piles, idle space during dull seasons, etc. The Commission study developed that the revenue producing area at principal terminals studied totalled only 60 per cent of entire space assigned to wharf demurrage (i.e., use factor = 60 per cent). Hence to obtain adjusted cost divide column (l) by 0.60. Divide again by 12 to reduce to a cost per revenue producing square foot per month (i.e., column (l) ÷ (0.60 x 12)).

5/ The unit of "tons per 30 days" or ton-months represents the total ton-days of demurrage divided by 30. Develop by special test or from billing records.

6/ Includes only checking costs which are jointly for the account of wharf demurrage and car loading or unloading, and which have been apportioned equally to each service.

7/ Minus High Piling Expense from line 41, column (e).

8/ Develop the expense for high piling per ton (including breaking the pile down) by dividing line 41, column (e) by the tons high piled during the accounting period, line 45, column (e). Or if tonnage data not available, develop cost per ton from special tests. Indicate method used: _____

SEPARATION OF EXPENSES FOR MISCELLANEOUS TERMINAL SERVICES BETWEEN CAR LOADING, CAR UNLOADING, WEIGHING, ETC.

Schedule F
Sheet 1 of 2 sheets

Line No.	Acct. No.	ITEM	Expenses from Schedule B Column (h)	APPORTIONMENT FACTORS	Car Loading 1/	Car Unloading 1/	Weighing	Stencilling	Re-coopering	Labor Sold (Cost plus)	Handling Lines	Other	Line No.
	(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)	(j)	(k)	(l)	
		I CARRYING CHARGES-STRUCTURES											
1		Shed Unit No. 1		Space Occupied 2/							xxx		1
2		Shed Unit No. 2		Space Occupied 2/							xxx		2
3		Other Facilities		Space Occupied 2/							xxx		3
4		Total-Carrying Charges-Structures		-							xxx		4
		I CARRYING CHARGES-LAND											
5		Shed Unit No. 1		Space Occupied 2/							xxx		5
6		Shed Unit No. 2		Space Occupied 2/							xxx		6
7		Other Facilities		Space Occupied 2/							xxx		7
8		Total-Carrying Charges-Land		-							xxx		8
		II DOCK OPERATION											
9	151	Superintendence		Accts. 152-182									9
10	152-4	Checking (Acct. Car Loading)		Direct		xxx	xxx	xxx	xxx	xxx	xxx	xxx	10
11	152-5	Checking (Acct. Car Unloading)		Direct	xxx		xxx	xxx	xxx	xxx	xxx	xxx	11
12	152-6	Checking-Other		Direct	xxx	xxx	xxx	xxx	xxx		xxx		12
13	172	Car Loading		Direct		xxx	xxx	xxx	xxx	xxx	xxx	xxx	13
14	173	Car Unloading		Direct	xxx		xxx	xxx	xxx	xxx	xxx	xxx	14
15	175	Handling Lines		Direct	xxx	xxx	xxx	xxx	xxx	xxx		xxx	15
16	176	Weighing		Direct	xxx	xxx		xxx	xxx	xxx	xxx	xxx	16
17	177	Stencilling		Direct	xxx	xxx	xxx		xxx	xxx	xxx	xxx	17
18	178	Recoopering		Direct	xxx	xxx	xxx	xxx		xxx	xxx	xxx	18
19	179	Misc. Labor for which Cost Plus Assessed		Direct	xxx	xxx	xxx	xxx	xxx		xxx	xxx	19
20	181	Cleaning Sheds & Docks		Direct or Space Occupied							xxx		20
21	182	Watchmen		Line 4							xxx		21
22	183	Power for Dock Use		Direct per test, or Acct. 151									22
23	185	Water for Dock Use		Acct. 151									23
24	187	Claims		Direct							xxx		24
25	188	Car Demurrage		Direct			xxx	xxx	xxx	xxx	xxx	xxx	25
26	189	Absorptions		Direct 3/									26
27	190	Insurance, Cargo		Direct 4/									27
28	191	Insurance, Compensation		Accts. 152-182									28
29	192	Telephone		Acct. 151									29
30	193	Stationery & Printing		Acct. 151									30
31	194	Taxes, Payroll		Accts. 152-182									31
		(Maintenance Dock Equipment)											
32	201	Car loading Equipment		Direct			xxx	xxx	xxx	xxx	xxx	xxx	32
33	202	Weighing Equipment		Direct	xxx	xxx		xxx	xxx	xxx	xxx	xxx	33
34	204	Tractors & Trailers		Direct per Use				xxx	xxx		xxx		34
		(Return-Dock Equipment)											
35		Car loading Equipment		Direct			xxx	xxx	xxx	xxx	xxx	xxx	35
36		Weighing Equipment		Direct	xxx	xxx		xxx	xxx	xxx	xxx	xxx	36
37		Tractors & Trailers		Direct per Use				xxx	xxx		xxx		37
38		Total-Dock Operation		-									38

SEPARATION OF EXPENSES FOR MISCELLANEOUS TERMINAL SERVICES BETWEEN CAR LOADING, UNLOADING, WEIGHING, ETC.

Schedule F
Sheet 2 of

Line No.	Acct. No.	I T E M	Expenses from Schedule B Column (h)	APPORTIONMENT FACTORS	Car Loading 1/	Car Unloading 1/	Weighing	Stencilling	Re-coopering	Labor Sold (Cost plus)	Handling Lifts	Other
	(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)	(j)	(k)	(l)
39	301-06	IV TRAFFIC EXPENSES		Lines 4, 8 and 38								
		V GENERAL & ADMINISTRATIVE										
40	351	Sal. & Exp. General Officers.....		Lines 4, 8 and 38								
41	352	Sal. & Exp. General Office Clerks.		Direct, or Acct. 351 5/								
42	353	Accounting & Billing.....		Direct, or Acct. 351 5/								
43	354-59	Other General & Administrative....		Acct. 351-353								
44	360	Office Equipment.....		Acct. 351-353								
45		Office Space Costs.....		Acct. 351-353								
46		Return on Working Capital.....		Lines 4, 38, 39, 40-45								
47		Total-General & Administrative....		-								
48		GRAND TOTAL-EXPENSES (Lines 4, 8, 38, 39 and 47).....		-								
49		Unit Costs 6/.....		-								
		Statistical Items 7/										
50		Tons Handled.....		-				xxx	xxx	xxx	xxx	xxx
51		Hours of Direct Labor.....		-	xxx	xxx	xxx					

1/ The costs for car loading and unloading may be further broken down or analyzed to reflect (1) the cost for mechanical loading vs. physical handling, or (2) the relative cost for commodities of different densities. As to the latter the variations in expense per ton for the direct labor can be closely approximated by special time studies.

2/ Normally there will be little or no charge against special services for the use of dock space, particularly in the case of car loading and unloading. The carrying charges upon the rail loading platform, trackage, etc., are embraced in the toll charges. This treatment follows the treatment of truck roadways, platforms, ramps, turning areas, etc. Unless a specific charge is laid against the truck tonnage entering the terminal over such trucking facilities, the rail tonnage should not be assessed for any of the carrying charges on trackage facilities. Since such charges ultimately rest against the cargo in any event, a breakdown usually serves no purpose (other than possibly providing for a more equitable breakdown of the maintenance expense such as is accomplished by requiring the rail tonnage or rail carriers to bear the cost for rail facilities, and the truck tonnage or trucking lines to bear the cost for truck roadways).

3/ Allocate in proportion to the gross revenue received from each item.

4/ Allocate in proportion to the protection carried (normally there would be lit if any involved).

5/ Where office clerical expense can be segregated by direct accumulation or spe time study, assign direct.

6/ Divide the Grand Total Expenses, line 48, columns (e) to (l) by the respectiv performance units shown on lines 50 and 51, columns (e) to (l), respectively, (i.e., the total car loading costs of column (e), line 48, divided by the ton loaded taken from column (e), line 50, yields the cost per ton). Even where unit costs are developed the gross expenses shown in line 48, columns (e) to can be directly compared with the gross revenues received from the performanc of each of these tariff services, respectively.

7/ Where tonnage cannot be used to measure the performance, use the most appropr unit such as "hours of labor," etc. The units should be identical with those which the charges are assessed.

EXHIBIT No. 64a

TARIFF CHARGES

Of The

BOARD OF HARBOR COMMISSIONERS OF THE STATE OF CALIFORNIA

FOR

SAN FRANCISCO HARBOR

Dockage, Tolls, Demurrage and Rentals

AND RULES AND REGULATIONS FOR OPERATION OF THE STATE BELT RAILROAD AND STATE GRAIN TERMINAL

No. 2

COMMISSIONERS:

J. F. MARIAS, President

GEO. SEHLMEYER E. A. McMILLAN

Effective December 1, 1925

Amended to March 15, 1940

Oct 9 1940

86191 printed in CALIFORNIA STATE PRINTING OFFICE

2345

RESOLVED: That the tariff charges of the Board of State Harbor Commissioners of the State of California for San Francisco Harbor No. 2, effective December 1, 1925, Amended to December 1, 1939, be and they are hereby amended to read as follows, effective March 15, 1940.

Rates of Toll	Rate in Cents			
	Car Ferry Slips	Inland Waterway	Coastwise	Foreign Intercoastal and offsh
(a) Vessels' stores and supplies, as well as all other cargo (except as provided in the following subdivision "d" and in Section 3085 of the Harbor and Navigation Code), per ton of 2,000 lbs.	15	10	15	25
(b) 400 lbs. or less	3	2	3	5
800 lbs. or less, and more than 400 lbs.	6	4	6	10
1,200 lbs. or less, and more than 800 lbs.	9	6	9	15
1,600 lbs. or less, and more than 1,200 lbs.	12	8	12	20
2,000 lbs. or less, and more than 1,600 lbs.	15	10	15	25

(c) When measured or charged a higher rate, the foregoing subdivision will govern all cargo.

(d) Rates apply per ton 2,000 lbs. weight, or 40 cubic feet measurement, on the basis of ship's manifest, except over car ferry slips, and as specifically provided in this section or as amended. Car ferry slip toll applies only per ton of 2,000 lbs. weight.

Rates - Specific	Inland Waterway	Coastwise	Foreign Intercoastal and offshore
ter for vessels - per 100 cu.ft.	5	5	5
nker fuel, for use of vessel supplied both coal and oil - per short ton	5	5	5
tomobiles, set up - each	25	25	1 00
llast, chalk, clay, cliffstone, gravel, nitrates, ores, chrome, manganese, pyrites, rock, salt, sand, sulphur, zinc concentrates.			
en handled in bulk direct between vessels and/or barges and/or cars.	10	15	20
en deposited on pier - per short ton	10	15	25
rick, fire, wt. 3 lbs. or over (not over 2.5 tons per M.) Per 1,000	25	25	55
rick, fire, wt. under 3 lbs. (Not over 1.5 tons per M.) Per 1,000	18	18	35
rick, other than fire. Per 1,000	20	20	40
ttle, horses and mules. Per head	15	15	25
lts, and calves, under 1 year old. Per head	7½	7½	12½
gs and sheep. Per head	3	3	5
s. Per 50 bundles	20	20	40
rdwood lumber, all kinds. Per M. Ft. B.M.	30	30	50
ftwood lumber, including dunnage and ship's lining. Per M. Ft. B.M.	20	20	40
lling and poles. Each	16	16	28
mber and lumber products, n.o.s. unmanufactured, per M. Ft. B.M.	20	20	40
troleum and petroleum products (6.6 lbs. to gal. in absence of wt.) in bulk, handled thru pipeline. per short ton	5	5	15
l, crude, fuel, gas, (7.4 lbs. to gal. in absence of wt.) in bulk, handled thru pipeline- per short ton	5	5	15
troleum products and vegetable oils in barrels, drums and containers	10	15	25
ls, vegetable, animal and fish, handled thru pipeline (7.7 lbs. to gallon in absence of wt.) Per short ton	5	5	15

Page 14 - item (a) delete
Page 15 - item (b) delete
Page 15 - item (c) delete
Page 15 - item (e)

) If cargo is removed from one pier to another to get quicker dispatch, a cents toll will be levied on all cargo assembled on the first pier provided me be removed within the five-day period. If not so removed, then the 25 nts toll must apply subject to the rule governing free time for assembling rgo.

Transshipment Cargo

(a) Inland waterway cargo discharged from a vessel on a pier or wharf and reshipped inland waterway by vessel from the same pier or wharf--------10

Reshipped by vessel from another pier or wharf-additional---------- 5

(b) Coastwise cargo discharged from a vessel on a pier or wharf and reshipped coastwise by vessel from the same pier or wharf----------15

Reshipped by vessel from another pier or wharf-additional---------- 5

(c) Inland waterway and coastwise cargo discharged from a vessel on a pier or wharf and reshipped intercoastal, foreign or offshore by vessel from the same pier or wharf----------20

Reshipped by vessel from another pier or wharf-additional---------- 5

(d) Intercoastal, foreign and offshore cargo discharged from a vessel on a pier or wharf and reshipped intercoastal, foreign or offshore by vessel from the same pier or wharf----------20

Reshipped by vessel from another pier or wharf-additional---------- 5

(e) Intercoastal, foreign and offshore cargo discharged from a vessel on a pier or wharf and reshipped inland waterway or coastwise by vessel from the same pier or wharf----------20

Reshipped by vessel from another pier or wharf-additional---------- 5

(f) Cargo discharged from one vessel to another and subsequently discharged on a pier or wharf shall be assessed one toll as follows:

Inland waterway cargo----------10
Coastwise cargo----------15
Intercoastal, foreign and offshore cargo----------20

(g) Cargo discharged on a pier or wharf and subsequently lifted by a vessel and loaded into another vessel lying at another pier or wharf shall be assessed one toll as follows:

Inland waterway cargo----------10
Coastwise cargo----------15
Intercoastal, foreign and offshore cargo----------20

10657

Board of State Harbor Commissioners

for

SAN FRANCISCO HARBOR

CALIFORNIA

J. F. MARIAS.....President

GEO. SEHLMEYER.....Commissioner

E. A. McMILLAN.....Commissioner

M. H. GATES.....Secretary

CARL M. SMITH.....Assistant Secretary

EARL WARREN, Attorney General.....Attorney

FRANK G. WHITE.....Chief Engineer

H. E. SQUIRE.....Assistant Engineer

W. A. GEARY.....Chief Wharfinger

JOSEPH V. NARDINI.....Superintendent Belt Railroad

TARIFF CHARGES AND RULES AND REGULATIONS OF THE BOARD OF STATE HARBOR COMMISSIONERS FOR SAN FRANCISCO HARBOR.

Resolved, By the Board of State Harbor Commissioners that on and after December 1, 1925, the following schedule of charges for Dockage, Tolls, Demurrage and Rentals for use of State piers and wharves and Rules and Regulations for operation of the State Belt Railroad and the State Grain Terminal for the Port of San Francisco be adopted as the lawful charges of the Board of State Harbor Commissioners in the management and control of the harbor of San Francisco until amended or repealed.

DOCKAGE

DEFINITIONS

(a) Dockage: The charge assessed against a vessel for berthing at a wharf, pier or seawall structure or coming within slip, channel, basin or canal.

(b) Coastwise Trade: Service along the Pacific Coast of the United States between the Mexican and Canadian borders. Exception: Coastwise vessels operating via British Columbia ports shall be classed as Coastwise.

(c) Inland Waterway Trade: Service between San Francisco and points located upon the bays, rivers and other inland waters of California.

(d) Foreign, Intercoastal and Offshore Trade: Service other than heretofore described.

UNDER-DECK MEASUREMENT

Other than ocean-going vessels, all watercraft engaged in Inland Waterway Trade will have dockage assessed, based on under-deck tonnage measurement.

LIGHTER RATES

(a) Lighter dockage rate is 1 cent per ton net tonnage per day of twenty-four hours, or part thereof.

(b) A lighter is understood to be a vessel which has neither power nor steering equipment; however, watercraft engaged exclusively in stevedoring, rigging or hoisting, will be granted lighter rates.

FULL DOCKAGE RATES

Full dockage rate is 2 cents per ton per day of twenty-four hours, or part thereof, for the first two hundred net registered tonnage, or under-deck tonnage measurement and ½ cent for each additional ton.

FULL DOCKAGE DEFINED

(a) Foreign, offshore and intercoastal vessels occupying assignments for which no monthly rental is paid the Harbor Commission, and foreign, offshore and intercoastal vessels whose owners, agents, or operators have no regular asisgnment for which a monthly rental is paid the Harbor Commission, will be charged full rate dockage, when occupied as specified below.

DOCKAGE—Continued

(b) Coastwise and inland water vessels other than lighters will be charged full rate dockage, when occupied as specified below:

1. Vessels docking at a wharf while discharging cargo.
2. Vessels arriving at this port with cargo on board, docking at a wharf while discharging or taking on passengers and baggage.
3. Vessels arriving at this port with cargo on board, docking at a wharf while taking on stores, supplies or fuel for such vessel.
4. Vessels with cargo on board docking at a wharf while lying idle.
5. Vessels with no cargo on board docking at a wharf while discharging passengers and baggage.
6. Vessels that are engaged in towing.
7. Vessels engaged in carrying passengers only.
8. Vessels carrying neither freight nor passengers.
9. Vessels arriving at this port with cargo on board, docking at any wharf, taking on additional cargo (exclusive of stores, supplies, or fuel for such vessel) amounting to not more than 1/5 the net registered tonnage of such vessel.

HALF DOCKAGE RATES

Half dockage rate is 1 cent per ton per day of twenty-four hours, or part thereof, for the first two hundred net registered tonnage, or under-deck tonnage measurement, and ½ cent for each additional ton.

HALF DOCKAGE DEFINED

(a) Foreign, offshore and intercoastal vessels (whose owners, agents or operators have an assignment for which a monthly rental is paid to the Harbor Commission), occupying their own or any other assigned berth for which a monthly rental is paid to the Harbor Commission, and all said vessels occupying a berth at Islais Creek Grain Terminal, State Products Terminal in China Basin, or Pier 45 Terminal, *while engaged in terminal operations*, will be charged half rate dockage.

(b) Foreign, offshore and intercoastal vessels (whose owners, agents or operators have no regular assignment for which a monthly rental is paid to the Harbor Commission) will be charged half rate dockage at all wharves when occupied as specified below.

(c) Coastwise and inland water vessels (other than lighters) will be charged half rate dockage at all wharves when occupied as specified below.

Provided, however, that any vessel lying at any pier or wharf, while idle, or while undergoing repairs, may be charged full rate dockage after ten days, at the discretion of the Chief Wharfinger.

1. Vessels with no cargo on board docking at a wharf solely for bunkering fuel, watering, fumigating, or undergoing repairs.

DOCKAGE—Continued

2. Vessels with no cargo on board docking at a wharf while lying idle.
3. Vessels with no cargo on board docking at a wharf taking on passengers, stores, supplies or fuel for such vessel.
4. Vessels with no cargo on board docking at a wharf while loading cargo.
5. Vessels while receiving or discharging ballast, or receiving stiffening.
6. Vessels while lying outside of a vessel at a wharf, (OB), discharging, loading or lying idle.
7. Vessels arriving at this port with no cargo on board, and operating from pier to pier to complete loading.
8. Vessels arriving at this port with cargo on board, docking at any wharf while taking on an amount of additional cargo in excess of one-fifth of its net registered tonnage, (exclusive of stores, supplies, or fuel for such vessel).

FISHING BOAT DOCKAGE

Fishing boats at Fishermen's Wharf shall pay dockage as follows:

Over-all lengths	Rate per week, or part thereof
Boats under 17 feet in length	$0.25
Boats 17 feet but not over 20 feet in length	.50
Boats over 20 feet but not over 24 feet in length	.75
Boats over 24 feet but not over 28 feet in length	1.00
Boats over 28 feet but not over 32 feet in length	1.25
Boats over 32 feet but not over 36 feet in length	1.50
Boats over 36 feet but not over 40 feet in length	1.75
Boats over 40 feet but not over 44 feet in length	2.00
Boats over 44 feet but not over 48 feet in length	2.25
Boats over 48 feet but not over 52 feet in length	2.50
Boats over 52 feet but not over 56 feet in length	2.75
Boats over 56 feet but not over 60 feet in length	3.00

Fishing boats over 60 feet in length will be charged $15.00 dockage each, per calendar mohth, during fishing season, provided, however, that such boats docking at the commencement of the fishing season, within the calendar month, or leaving Fishermen's Wharf at the end of the fishing season within the calendar month shall pay a pro rata of the $15.00 monthly rate, for the portion of said months, based on the number of days in said months the boat is docked at Fishermen's Wharf; and provided further that fishing boats over 60 feet in length, docking during a period less than one full calendar month during the fishing season, shall be charged full rate dockage, based on under-deck net tonnage.

Fishing boats over 60 feet in length will be charged $15.00 dockage each per calendar month or fraction thereof while lying idle during off season.

DOCKAGE—Continued

An additional charge equal to one week's dockage will be assessed against each boat for the use of the boat ways at Fishermen's Lagoon.

All live crab boxes must be numbered, such number to correspond to the number on the owner's boat.

A DAY'S DOCKAGE

(a) Dockage commences upon the vessel when making fast to the wharf or coming within a dock, slip, basin, channel or canal, and each twenty-four hours thereafter, or part thereof, constitutes a day's dockage.

(b) No deduction shall be made for Sundays, holidays, or account weather conditions.

PER DIEM DOCKAGE MULTIPLE

When per diem dockage of a vessel is not a multiple of five it must be reduced or increased, as the case may be, to the nearest such multiple; provided, that if it be equally near to two such multiples, it must be increased to the first such multiple above.

PAYMENTS MADE WHEN DUE

All bills for dockage must be paid when due, whether approved by the master or not. Failure to pay said bills on presentation will subject the vessel to be placed on the Delinquent List, and to the penalties provided by law. Errors, if any, will be rectified by the Board.

DOCKAGE TRANSFER FOR A DAY

(a) When a vessel of any kind is charged or has paid dockage at a wharf for any day, she may use the same or any other wharf during that day without further charge, no matter how often she may leave and return, provided the master of the vessel furnishes the wharfinger in charge of the facility, to which the vessel transfers, the facility number at which the day's dockage was assessed.

(b) A vessel arriving from private premises will be charged at the same rate and in the same manner as if arriving from the stream.

CREDIT DOCKAGE LIST

The Board, in its discretion, may, upon application, release parties from the obligation of paying dockage on vessels in the manner required by these rules, provided such parties make written application to be placed on the Credit Dockage List. Said applicants must give the names and class of vessels of which they are the owners.

DOCKAGE—Continued

managers, agents or consignees, and must agree to pay, upon presentation, until written notice to the contrary, the dockage bills on all such vessels. If such application be granted, such person must, on presentation of bill therefor, pay such dockage. In case of failure to pay such bill on presentation, the permission shall be revoked. Ocean-going vessels not on Credit Dockage List may, in lieu of paying the dockage bill to Wharfinger at wharf, produce a slip signed by the owner or agent of the vessel, stating that he will pay, on presentation, the dockage bill due on such vessel. The bill for the dockage of said vessel, with the slip attached, must be sent forthwith to the Secretary's office for collection.

DELINQUENT LIST PENALTY

If any vessel leaves a wharf, slip, pier, channel or basin, unless forced to do so by stress of weather or fire, without first paying the dockage due, such vessel will be placed upon the Delinquent List, and must not be permitted to use any wharf, slip, channel or basin, without first paying double the bill incurred and $10 in addition thereto, except by permission of the Board.

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TOLLS—WHARFAGE

DEFINITIONS

(a) Tolls—Wharfage: The charge for cargo conveyed on, over or through any State structure, both inward and outward, or loaded or discharged while vessel is moored in any slip, basin, channel or canal.

(b) Coastwise Trade: Service along the Pacific Coast of the United States between the Mexican and Canadian borders. Exception: Coastwise vessels operating via British Columbia ports shall be classed as coastwise.

(c) Inland Waterway Trade: Service between San Francisco and points located upon the bays, rivers, and other inland waters of California.

(d) Foreign, Trans-Pacific—Trans-Continental,* Intercoastal and Offshore Trade: Service other than heretofore described.

Rates of Toll	RATE, IN CENTS			
	Car ferry slips	*Inland waterway*	*Coastwise*	*Foreign intercoastal and offshore*
(a) Vessels' stores and supplies, as well as all other cargo (except as provided in the following subdivision "d" and in Section 3085 of the Harbor and Navigation Code), per ton of 2,000 lbs.	10 5	10	15	25
(b) 400 lbs. or less	1	2	3	5
800 lbs. or less, and more than 400 lbs.	2	4	6	10
1,200 lbs. or less, and more than 800 lbs.	3	6	9	15
1,600 lbs. or less, and more than 1,200 lbs.	4	8	12	20
2,000 lbs. or less, and more than 1,600 lbs.	5	10	15	25
(c) When measured or charged a higher rate, the foregoing subdivision will govern all cargo.				
(d) Rates apply per ton 2,000 lbs. weight, or 40 cubic feet measurement, on the basis of ship's manifest except over car ferry slips, and as specifically provided in this section or as amended. Car ferry slip toll applies only per ton of 2,000 lbs. weight.				

* No tolls will be charged to shipper or consignee on Export or Import shipments moving through the port of San Francisco under rates published in Trans-Continental Freight Bureau Tariffs 29 and 30 series respectively. Such tolls will be absorbed by rail and ocean carriers under provisions of those tariffs.

TOLLS—WHARFAGE—Continued

Rates—Specific	RATE IN CENTS Inland waterway	Coastwise	Foreign intercostal and offshore
Water for vessels—per 100 cu. ft.	5	5	5
Bunker fuel, for use of vessel supplied both coal and oil—per short ton	5	5	5
Automobiles, set up—each	25	25	1 00
Ballast, chalk, clay, cliffstone, gravel, nitrates, ores, chrome, manganese, pyrites, rock, salt, sand, sulphur, zinc concentrates.			
When handled in bulk direct between vessels and/or barges and/or cars	10	15	20
When deposited on pier—per short ton	10	15	25
Brick, fire, wt. 3 lbs. or over (not over 2.5 tons per M.) per 1,000	25	25	55
Brick, fire, wt. under 3 lbs. (not over 1.5 tons per M.) per 1,000	18	18	35
Brick, other than fire—per 1,000	20	20	40
Cattle, horses and mules—per head	15	15	25
Colts, and calves, under 1 year old—per head	7½	7½	12½
Hogs and sheep—per head	3	3	5
Laths—per 50 bundles	20	20	40
Hardwood lumber, all kinds—per M. ft. B.M.	30	30	50
Softwood lumber, including dunnage and ship's lining—per M. ft. B.M.	20	20	40
Piling and poles—each	16	16	28
Lumber and lumber products, n.o.s, unmanufactured—per M. ft. B.M.	20	20	40
Petroleum and petroleum products (6.6 lbs. to gal. in absence of wt.) in bulk, handled through pipeline—per short ton	5	5	15
Oil, crude, fuel, gas (7.4 lbs. to gal in absence of wt.) in bulk, handled through pipeline—per short ton	5	5	15
Petroleum products and vegetable oils in barrels, drums and containers	10	15	25
Oils, vegetable, animal and fish, handled through pipelines (7.7 lbs. to gallon in absence of wt.) per short ton	5	5	15

TOLLS TO BE PAID BY VESSEL

(a) A discharging or a loading toll shall be imposed on vessels' stores and supplies and fuel for such vessel, as well as all other cargo (except as specified, Sec. 3085 of the Harbor and Navigation Code), and must be paid by the vessels discharging or loading same. The loading vessel may pay the toll, but in event that the loading vessel refuses to pay the toll, then the discharging vessel, barge or riverboat must pay. The Wharfinger must get a toll slip from each and every discharging operation; then obtain the proper signature from the loading company; if they refuse to asume the toll, then the Wharfinger must finally get the discharging vessel, barge or riverboat to sign the toll slip.

(b) If any vessel leaves a wharf, slip, pier, channel or basin, unless forced to do so by stress of weather or fire, without first paying the tolls due, such vessel will be placed upon the Delinquent List, and must not be permitted to use any wharf, slip, channel or basin without first paying double the bill incurred, and $10.00 in addition thereto, except by permission of the Board of State Harbor Commissioners.

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TOLLS—WHARFAGE—Continued

WEIGHT MAY BE ESTIMATED

When not shipped in case or barrel, etc., and actual weight or measurement is not obtainable, petroleum and petroleum products will be subject to estimated weight of 6.6 lbs. per gallon, except that crude, fuel or gas oil will be subject to estimated weight of 7.4 lbs. per gallon.

CERTIFIED STATEMENT OF CARGO REQUIRED

(a) The owner, agent, manager, consignee, master, or person in command of any vessel must deliver, at the time of her arrival at any wharf, or slip, at the office of the Wharfinger in charge of the wharf, a full and correct statement, signed and certified to by him, on blanks furnished by the Board, of all the cargo of every kind intended to be discharged from such vessel at said wharf, specifying the character and quantity of each kind of cargo, as per schedule adopted by the Board.

(b) The owner, agent, manager, consignee, master, or person in command of any vessel, must, before her departure from any wharf, slip, basin or channel, deliver at the office of the Wharfinger a full and correct statement, signed and certified to by him, on blanks furnished by the Board, of all the cargo of every kind received on such vessel at said wharf, specifying the character and quantity of each kind of cargo, as per schedule adopted by the Board.

(c) In case any owner, agent, manager, consignee, master, or person in command of any vessel shall neglect or refuse to deliver the statement provided for in paragraphs (a) and (b) of this rule, or shall wilfully make a statement false in any of the particulars required by such rules, he will be prosecuted therefor, and, in case of conviction, suffer the penalties provided for by law, as follows: "By a fine not exceeding $100.00, or by imprisonment not exceeding fifty days, or by both such fine and imprisonment." (Stats. 1880, p. 10.)

WHEN TOLLS ARE PAYABLE

(a) Except as provided in section (b), every vessel shall be obliged to pay to the Wharfinger in charge of the wharf, the amount due for tolls upon cargo to be discharged for such vessel; and every vessel shall be obliged to pay to the Wharfinger in charge of the wharf at which she finishes receiving cargo, the amount due for the tolls upon that portion of cargo received at said wharf. Tolls are due and payable—

1. On vessels intending to discharge, before any cargo is discharged
2. On vessels loading or receiving cargo, before the same is placed aboard, when possible to ascertain the amount.
3. Before the departure of the vessel from the wharf.

TOLLS—WHARFAGE—Continued

CREDIT TOLL LIST

(b) The Board may, upon application, release parties from paying tolls upon cargo in the manner required by these rules, provided such parties make written application to be placed upon the Credit List; and if such application be granted, the Board may require a deposit to cover the probable amount of such person's tolls in any one month; and thereafter such person must, on or before the third day of each month, deliver at the office of the Board a statement, on blanks furnished by the Board for that purpose, specifying, as per schedule adopted by the Board, the character and quantity of each kind of cargo discharged from or received at each wharf upon each trip of each vessel of which such person is the owner, master, agent, manager, or consignee during the preceding month, and must, upon presentation of bill therefor, pay the tolls thereon. And in case of a failure to furnish such statement or pay such tolls, the permission shall be at once revoked, and the vessel or vessels from which the cargo has been discharged, or upon which received, shall be placed on the Delinquent List; and the Secretary must immediately notify the Wharfingers of that fact, and apply the said deposit toward the payment of such tolls; and the balance of said deposit, if any, shall be returned to the person who made it.

(c) Any person or firm not availing themselves of the Credit Toll privilege during a period of six months, or the amount of whose tolls do not average more than $10 per month for such time, shall be stricken from the Credit Toll List.

(d) Wharfingers are required to get from the owner, agent, master, or consignee of any vessel discharging or loading at his wharf, who is on the Credit Toll List, an order, signed by him, on blanks furnished by the Board, requesting the tolls on such vessel or vessels to be charged to his account; said order to be filed with the Wharfinger's daily report.

PENALTY FOR FAILURE TO PAY TOLLS

In case any person shall discharge from, or allow to be discharged from, any vessel made fast to or using any wharf, or slip, any cargo before the tolls thereon have been paid, or permit any watercraft to leave any wharf, or slip, unless forced to do so by stress of weather, or fire, before the tolls on any cargo received while at such wharf or slip have been paid (except such person is upon the Credit List), he shall be prosecuted therefor, and upon conviction thereof he shall be punished as provided by law, which is as follows:

"By a fine not exceeding $500, or by imprisonment not exceeding one hundred days, or by both such fine and imprisonment." (Stats. 1880, p. 10.)

WHARFINGER MAY INSPECT VESSELS

The Wharfinger is authorized to enter upon and inspect any vessel to ascertain the kind and quantity of cargo thereon, and no person shall hinder or molest any Wharfinger or refuse to allow him to enter upon any vessel for the purposes specified in this rule.

MANIFESTS TO BE FURNISHED

When requested the master, agent, or consignee of vessels must furnish copies of their manifests.

WHEN NO TOLLS TO BE COLLECTED

SECTION 3085. Harbor and Navigation Code. Tolls or wharfage shall not be collected from travelers going on board or leaving any steam vessel or ferry, or upon their carriages or baggage, nor from any person or vehicle employed to transport or convey the baggage to or from any steam vessel or ferry, nor for empty packages returned to the wharf or any vessel; nor for domestic supplies weighing less than one hundred pounds and intended for consumption by private individuals, and not for sale.

TRANSSHIPMENT CARGO

(a) Inland waterway cargo discharged from a vessel on a pier or wharf and reshipped inland waterway by a vessel from the same pier or wharf	10¢
Same cargo reshipped inland waterway by vessel from another pier or wharf additional	5¢
Inland waterway cargo discharged from a vessel on a pier or wharf and reshipped coastwise by a vessel from the same pier or wharf	15¢
Same cargo reshipped by a vessel from another pier or wharf additional	5¢
Inland waterway cargo discharged from a vessel on a pier or wharf and reshipped intercoastal, foreign or offshore by a vessel from the same pier or wharf	25¢
Same cargo reshipped by a vessel from another pier or wharf additional	5¢
(b) Coastwise cargo discharged from a vessel on a pier or wharf and reshipped inland waterway or coastwise by vessel from the same pier or wharf	15¢
Same cargo reshipped by vessel from another pier or wharf additional	5¢
Coastwise cargo discharged from a vessel on a pier or wharf and reshipped intercoastal, foreign or offshore by a vessel from the same pier or wharf	25¢
Same cargo reshipped by vessel from another pier or wharf additional	5¢
(c) Intercoastal, foreign and offshore cargo discharged from a vessel on a pier or wharf and reshipped intercoastal, foreign or offshore by vessel from the same pier or wharf	25¢
Same cargo reshipped by vessel from another pier or wharf additional	5¢
(d) Intercoastal, foreign and offshore cargo discharged from a vessel on a pier or wharf and reshipped inland waterway or coastwise by vessel from the same pier or wharf	25¢
Same cargo reshipped by vessel from another pier or wharf additional	5¢

TOLLS—WHARFAGE—Continued

(e) Cargo discharged from one vessel to another and subsequently discharged on a pier or wharf shall be assessed one toll as follows:

Inland waterway cargo	10¢
Coastwise cargo	15¢
Intercoastal, foreign and offshore cargo	25¢

(f) Cargo discharged on a pier or wharf and subsequently lifted by a vessel and loaded into another vessel lying at another pier or wharf shall be assessed one toll as follows:

Inland waterway cargo	10¢
Coastwise cargo	15¢
Intercoastal, foreign and offshore cargo	25¢

(g) If two piers are used in the handling of cargo, then two tolls shall be collected.

(h) If cargo is removed from one pier to another to get quicker dispatch, a 5 cents toll will be levied on all cargo assembled on the first pier provided same be removed within the five-day period. If not so removed, then the 25 cents toll must apply subject to the rule governing free time for assembling cargo.

TOLLS ON SHIPMENTS FROM OR TO CARS ON PIERS

Merchandise discharged from cars, while spotted on piers, or merchandise landed on piers from cars, to be removed from piers by teams or trucks, must pay coastwise tolls. Merchandise landed on piers or to cars by trucks or teams to be removed by cars must pay coastwise tolls.

WHARF RENTALS

DEFINITIONS

(a) Rental: The charges per square foot for wharf area assigned.

(b) Coastwise Trade: Service along the Pacific Coast of the United States between the Mexican and Canadian borders. Exception: Coastwise vessels operating via British Columbia ports shall be classed as Coastwise.

(c) Inland Waterway Trade: Service between San Francisco and points located upon the bays, rivers, and other inland waters of California.

(d) Foreign, Intercoastal and Offshore Trade: Service other than heretofore described.

TEMPORARY ASSIGNMENT UPON APPLICATION

(a) Temporary assignment will be made upon application to the Chief or Assistant Chief Wharfinger and only after such application is approved by the Chief or Assistant Chief Wharfinger is a vessel entitled to berth.

(b) Such application must state the length and draught of the vessel, kind of cargo and should specify locality desired.

(c) Berths shall be assigned in the order of arrival, except vessels ready to discharge cargo shall have preference over those ready to receive cargo.

Any vessel engaged in Foreign, Intercoastal or Coastwise or inland waterway trade that takes a berth outside of its own regular assignment without first filing a formal application for such berth with the Chief Wharfinger, will be fined $25.

REGULAR ASSIGNMENTS

Upon application to the Board, regular monthly assignments will be granted when available, but only when necessary to maintain efficient service.

UNOCCUPIED ASSIGNED BERTH MAY BE USED

The assignment of berth privilege, either a temporary or regular assignment, includes only the preferential right of the person or firm making application therefor to dock vessels owned or operated by said person or firm, at such berth, subject to the provision that when such berth be unoccupied, the Chief Wharfinger may use said berth or pier for such other operations as he may deem expedient.

WHARF RENTALS—Continued

OUTSIDE BERTH EXPENSES DIVIDED

When an outside berth assignment is made to an assigned pier, the steamship company so assigned must pay to the assignee of the pier its share of all pier expenses; namely, lights, water, telephone, watchman, gateman, heating, if any, while occupying the berth, until the operation of loading or discharging has been fully completed.

ASSIGNMENTS NOT TRANSFERABLE

Assignments or berth privilege and all other assignments of space on wharves or other property of the State under jurisdiction of the Board are not to be sublet or transferred. Forfeiture of the assignment of privilege is the penalty for violation of this rule.

RATES

	Monthly rate per square foot
Vessels engaged in Coastwise or Inland Waterway Trade	$0.012
Vessels engaged in Foreign or Offshore Trade	.006

WHARF DEMURRAGE

DEFINITION

Wharf Demurrage: The charge assessed against merchandise which remains on the wharf or pier beyond the free period.

FREE TIME FOR ASSEMBLING CARGO

(a) Exclusive of Sundays and Legal Holidays, the free time allowed for assembling cargo upon space assigned shall be as follows:

Coastwise and Inland Waterway Trade---------- 5 days
Foreign, Offshore and Intercoastal Trade----------10 days

(b) Coastwise and Inland Waterway Trade: All assembled cargo remaining on space assigned longer than free period provided herein (five days after assignment of space), shall thereafter be assessed 2½ cents per ton per day weight or measurement, whichever will yield the greater revenue, for the first five days or part thereof and 5 cents per ton per day for the next five days or part thereof and 10 cents per ton per day for each succeeding day late (one ton minimum). Lumber may be charged per 1000 feet, board measurement.

(c) Foreign, Offshore and Intercoastal Trade: All cargo assembled may remain upon space assigned the maximum free time named herein without charge. A vessel that is one day late in commencing to load assembled cargo will be charged for only such cargo as was upon space assigned at close of first assembling day; two days late, for only such cargo as was upon space assigned at close of first and second assembling day, etc., at the following rates:

(Lumber may be charged per 1000 feet, board measurement.)

1st day to 3d day late, inclusive---------- 2½ cents per ton per day
4th day to 7th day late, inclusive---------- 5 cents per ton per day
Each succeeding day late----------10 cents per ton per day

(d) Minimum charge: When no cargo is assembled within the five or ten day periods, or when the charge assessed against cargo assembled aggregates less than half dockage rate, such half dockage rate shall be assessed against vessel that fails to commence loading, for each day beyond the five or ten day free period.

(e) This assessment shall be against the ship for which cargo is assembled and must be paid by receiving ship. It is expected that ship operators will exert every effort to obviate these charges by figuring

WHARF DEMURRAGE—Continued

closely and permitting no cargo to be assembled, the loading of which will not commence within the free time allowed.

FREE TIME FOR REMOVING DISCHARGED CARGO

Exclusive of Sundays and Legal Holidays, Coastwise and Inland Waterway and Intercoastal cargo remaining when necessary, on space assigned longer than 5 days, Foreign, Offshore longer than 7 days and in transit cargo longer than 10 days, shall thereafter (Sundays and Holidays not excepted), be assessed a wharf demurrage charge of 25 cents per ton, weight or measurement, whichever will yield the greater revenue, for the first 5 days or part thereof, and 50 cents per ton for each succeeding period of 5 days or part thereof (one ton minimum).

Exception: Grain, flour, millstuffs, onions, potatoes, beans, and seeds may, when necessary, remain on Pier No. 27 until five o'clock p.m. on the third day after discharge free of demurrage charge; for the next seven days, or any part thereof, Sundays and Holidays excepted, there shall be a demurrage charge of 5 cents per ton, weight or measurement, whichever will yield the greater revenue; for each additional day of twenty-four hours, or fraction thereof, thereafter, the demurrage charge shall be 5 cents per ton, weight or measurement, whichever will yield the greater revenue (one ton minimum). The term "grain" is intended to and does include wheat, barley, oats, corn and rye; the term "flour" includes only bran, middlings, shorts and ground feed.

MAXIMUM FREE TIME

The maximum free time of cargo for local delivery shall be 5 days; Foreign or Offshore 7 days; in transit 10 days; exclusive of Sundays and Holidays. The Chief Wharfinger is empowered at any time to shorten this free time provided herein and to cause the removal of any cargo, or portion thereof, at the expense of the owner or consignee irrespective of the free period.

Whether moving directly to or from bulkhead or left on pier, all cargo remaining on space assigned is entitled to free time only as provided for assembling or for removing shipments.

OTHER WHARF DEMURRAGE RATES

When space is available and the prompt loading and discharging of a vessel will in no manner be interfered with, cargo as described below may, at discretion of the Chief Wharfinger, be held at demurrage rate of 12½ cents per ton, weight or measurement, whichever will yield the greater revenue, for each seven days or part thereof; Sundays and Holidays not excepted (one ton minimum). (Lumber may be charged per one thousand feet, board measure.)

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WHARF DEMURRAGE—Continued

1. All cargo that is not removed by vessel for which assembled, such cargo as rejected, left over, or over booked. (Until stored, such cargo is subject to wharf demurrage, commencing from date vessel finishes loading or leaves pier, at rate of 2½ cents per ton per day for the first 5 days, 5 cents per ton per day for the next 5 days, and 10 cents per ton per day for each succeeding day thereafter.)

2. Outbound cargo in transit received prior to assembling date of vessel. Charge to commence when cargo was placed on pier and continue until receiving date of vessel.

3. Inbound cargo in transit pending final disposition. Charge to commence at expiration of free period and to continue until cargo is lifted or removed from pier.

NO RESPONSIBILITY ASSUMED

The Board assumes no responsibility for handling, insurance or otherwise, and reserves the right to terminate storage of any goods and to cause removal thereof at expense of owner.

CLAIMS FOR REFUNDS TIME LIMIT

Claims for refunds must be presented within thirty days from the month of billing in order to receive consideration by the Board.

WHARF DEMURRAGE ON LUMBER, SHINGLES OR LATHS

Hardwood lumber coming from foreign ports will be treated as part cargo inside the pier with a limit of 7 days free time after final discharge of vessel. If trucked immediately to the bulkhead outside of the pier 10 days free time will be allowed after final discharge of vessel.

Lumber discharged on open piers, wharves or bulkheads for the purpose of manufacturing box shooks at the box factories must be hauled at the rate of 50,000 feet per day beginning immediately after the final discharge of vessel. Otherwise the rule relative to wharf demurrage on lumber, shingles or laths will apply.

Logs discharged on open piers, wharves or bulkheads for the sole purpose of the construction of new building sites in San Francisco's business district will be allowed 10 days free time from the final discharge of the vessel. Otherwise the rule relative to wharf demurrage on lumber, shingles or laths will apply.

All lumber, shingles or laths discharged by coastwise or inland waterway vessels at piers, wharves or bulkheads for local delivery, or car delivery, shall abide by the following rule (Sundays and Holidays excluded):

From 1,000 feet to 100,000 feet—4 days free time after final discharge of vessel.

From 101,000 feet and upwards—7 days free time after final discharge of vessel.

If lumber, shingles, laths remain on piers, wharves or bulkheads longer than the above stated times a charge at the rate of 15 cents per day per 1000 feet board measure will be made, until cleared.

ISLAIS CREEK LUMBER TERMINAL

Area on Seawall Lot No. 344, adjacent to Wharf 92, is declared a terminal for the handling of lumber only.

Lumber transferred to this area on which tolls have been declared to the Board of State Harbor Commissioners, will be granted 10 days free time (Sundays and Holidays included) plus any unused free time to which the cargo was entitled by virtue of the declaration of tolls.

Lumber remaining at the terminal after the expiration of the free time will be assessed demurrage at the rate of 15 cents per 1000 feet board measure for each 30-day period or part thereof, until removed.

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ISLAIS CREEK GRAIN TERMINAL

GRAIN, TOLL AND DEMURRAGE RATES

Commencing August 4, 1932, the following toll and demurrage rates shall apply to the Islais Creek Grain Terminal:

	Per ton
Toll (20 days free time)	25¢
Bulkhead Demurrage, first 10 days, following free time	15¢
Bulkhead Demurrage, next 30 days, or fraction thereof	25¢
Bulkhead Demurrage, next 30 days, or fraction thereof	25¢

Demurrage rates beyond the above periods shall be 5 cents per ton for each 30 days or fraction thereof, provided, however, that the maximum time for any shipment at the above rates shall not extend beyond one year following its arrival. All grain remaining in terminal at the end of each expiring year of its arrival shall be treated as a new arrival, and original rates apply.

TERMINAL TOLL AND DEMURRAGE RATES

Toll and demurrage rates at State Products Terminal (56) and Pier 45 Terminal, for terminal operations shall be as follows:

GENERAL MERCHANDISE
(NOT OTHERWISE SPECIFIED)

	Per ton
Toll (10 days free time)	25¢
Demurrage, first 20 days following free time	15¢
Demurrage, next 30 days or fraction thereof	25¢
Demurrage, next 30 days or fraction thereof	30¢

Demurrage rates beyond the above periods shall be 30 cents per ton for each 30 days or fraction thereof.

FERTILIZER AND FERTILIZER MATERIAL

Urea
Sulphate of Ammonia
Nitrate of Soda
Calcium Nitrate
Leuna Saltpeter
Cal Urea
Calnitro

Nitrogen Phosphate Compound
Ammoniated Phosphate
Leunaphos

FERTILIZER AND FERTILIZER MATERIAL—Continued

Basic Slag	Nitrate of Potash, Fertilizer Grade
Superphosphate	Fertilizer Compounds or mixed Fertilizers
Sulphate of Potash	Bone Meal, odorless
Muriate of Potash	Fish Meal
Sulphate of Potash, Magnesia	Soda Ash
Manure Salts	
Kainit	

	Per ton
Tolls (10 days free time)	25¢
Demurrage, first 20 days, or fraction thereof following free time	7½¢
Demurrage, next 30 days, or fraction thereof	12½¢
Demurrage, next 30 days, or fraction thereof thereafter	15¢

MISCELLANEOUS

DISTANCES FROM PIERHEAD

Vessels must not run within five hundred (500) feet from and parallel to the pierhead line.

OBEY ORDERS OF CHIEF OR ASSISTANT CHIEF WHARFINGER

(a) *Vessels must at all times have on board at least one person in charge with authority to take such action in any emergency as may be demanded.*

(b) A vessel must haul or go into the stream at its own expense when so ordered by the Chief or Assistant Chief Wharfinger, who shall have power to enforce removal at the expense of such vessel.

(c) The master, agent, or owner of a vessel refusing or neglecting to obey the orders of the Chief or Assistant Chief Wharfinger in any matter pertaining to the regulation of the harbor, or removal or stationing of such vessel, is guilty of a misdemeanor, and liable to a fine not exceeding $300, or imprisonment not exceeding one hundred days. (Political Code, Section 2541.)

MUST REPORT DAMAGE TO STATE PROPERTY

(a) In case any damage is done to a pier, wharf or other state property, the extent of damage, together with the name of vessel or person causing it, must be reported in writing forthwith by the Wharfinger in charge to the Chief Wharfinger, giving the date and hour, if possible, and the names and addresses of the person or persons witnessing accident.

(b) The Chief Wharfinger shall, in turn, immediately report said damage to the Chief Engineer and to the Secretary of the Board.

(c) Expense of repairing said damage shall be charged against vessel or individual responsible.

(d) Vessels of 1000 net tons or over are cautioned not to use the dolphins on the outer ends of the wharves to break or warp around when making a landing.

SAILING VESSELS MUST APPROACH "HEAD ON"

Sailing vessels when being moved into a slip or alongside the wharf must approach "head on," and when at the wharf must lie head toward the shore. The studding-sail booms and sprit-sail yards must be rigged in, their offshore anchors suspended ready for dropping, their lower

MISCELLANEOUS—Continued

and topsail yards braced "sharp up" on their inshore braces, except when in actual use discharging or loading cargo; and, when required by the Wharfingers, their movable fore-and-aft spars, jibboom, and martingale must be rigged in.

USE MOORING FACILITIES PROVIDED

No person shall make fast any rope or mooring to any wharf (except to the mooring piles, mooring bitts or rings provided for this purpose) or to any shed or piles supporting same or to any dolphin or fender piles.

STRETCHING LINES ACROSS SLIP PROHIBITED

Vessels lying at wharf are strictly prohibited from stretching mooring lines across the slip to the opposite wharf, without first obtaining the permission of the Chief Wharfinger.

LIGHTS AT NIGHT MUST SHOW

A vessel while anchored or moored in the harbor must at all times of the night show lights.

CHUTES TO BE USED

When ballast, stone, coal, bricks, ashes, cinders, dust, rubbish or other loose matter or material that will sink, is being landed from a vessel upon a wharf, or is being transferred from one vessel to another, a canvas chute or other contrivance to the satisfaction of the Wharfinger must be used to prevent any part of such substance falling into the slip.

FIRE PROHIBITED

Fire must not be used on board of any vessel at the wharves or in the slips for heating pitch, tar, or other inflammable substances, but may be used on floating stages or boats for the purpose of heating such substances for repairing vessel; provided such fire is constantly in charge of a person capable of taking proper care of the same. No bonfire nor open fire for the burning of rubbish or refuse materials shall be allowed on any of the State property under the jurisdiction of the Board of State Harbor Commissioners, and it shall be the duty of the Wharfingers to strictly enforce this rule.

SPARK CATCHER REQUIRED

Every steam engine, when used upon any wharf for loading or unloading cargo, and pile driver when working on or alongside any wharf, must have upon its smokestack a bonnet or spark-catcher that will effectually prevent sparks from falling upon such wharf or upon

the deck of any vessel. In operating donkey or hoisting engines under sheds there must be provided by the owner or operator a bent or curved pipe, with spark arrester, extending to the outside of the shed. The owners and operators of donkey or hoisting engines operated on any of the wharves on the waterfront must clean up and remove all ashes, cinders, and waste from their engines.

FLOATING PILES OR TIMBER NOT ALLOWED

No floating piles or timber shall be allowed to remain in any Slip without permission of the Chief or Assistant Chief Wharfinger.

NO RUBBISH DEPOSITS

(a) No substance that will sink or form an obstruction to navigation or become a nuisance shall be deposited in the waters of the harbor without first obtaining permission from the War Department, United States Engineer's Office, Customhouse.

(b) Rubbish or other substance on which no demurrage is charged, must be removed from the wharf, bulkhead or other State property by the person placing it there; otherwise it will be removed by the Wharfinger at the expense of the party responsible.

OBSTRUCTIONS TO BE REMOVED

(a) Coal screens, donkey engines, stevedores' tools and appliances, merchandise, vehicle, material or structure, must be removed from the wharves or other State property when directed by the Wharfinger.

(b) If any obstruction be not removed within twenty-four hours after notice, such material will be stored or sold by the Board of State Harbor Commissioners, and $25 charged for each day that the obstruction is permitted to remain, together with the expense of removal, storage or sale.

AUTHORITY TO COLLECT PORT CHARGES

Every person who collects any Dockage, Tolls, Wharf Rentals, Wharf Demurrage, Bulkhead Storage, or rental for cranage and equipment owned by the Board, or lands, ships, or removes any property upon or from any portion of the waterfront of San Francisco, or from or upon any of the wharves, piers or landings under the control of the State Harbor Commissioners, without being by such Board authorized so to do, is guilty of a misdemeanor. (Penal Code, Section 642.)

VESSELS EXTENDING BEYOND PIER RESPONSIBLE

Vessels while lying across the end of any pier or wharf, or whose sterns extend beyond the end of any pier or wharf, will be responsible for any and all damage to themselves or to any other vessel while occupying that position.

WEIGHT PERMITTED ON WHARF

No load exceeding seven and one-half tons, except in the case of a gle package, shall be admitted on or taken off a wharf. A single ckage exceeding seven and one-half tons may be admitted on or taken a wharf with permission of the Chief Wharfinger and upon com- ance with such conditions as he may impose therefor. No weight eeding 500 pounds per square foot or its equivalent shall be allowed any pier or wharf; and driving on a wharf faster than a walk is for- dden, and a violation of this rule shall subject the offender to prose- tion for misdemeanor.

NO LIABILITY FOR LOSS OR DAMAGE

The Board is not liable for damages to, or loss of, merchandise ile on a wharf, bulkhead, or other State property.

SMOKING NOT ALLOWED

No smoking allowed on any wharf or bulkhead. Persons violating is rule will be prosecuted under Ordinance No. 831 of the City and unty of San Francisco.

EXPLOSIVES, COMBUSTIBLES, INFLAMMABLES, ETC.

(a) No gunpowder nor other explosive shall be discharged on or aded from any wharf or structure, or vessel. Explosives meant herein e defined in paragraph 1503 of the Regulations of the Interstate Com- erce Commission for the transportation of explosives, quoted and ferred to in paragraph 12 of the federal rules and regulations on Anchorage Ground."

(b) Acids, combustibles (benzine, coal oil, distillate, gasoline, uid petroleum, naphtha, turpentine, or other combustibles) and flammables (paper, rags, excelsior, sisal, hay and straw, and other rous products) shall not be permitted to remain over night on any harf. Unless removed by the owners or consignees by 5 o'clock p.m. each day, the Chief Wharfinger shall have them removed at the pense of whom it may concern.

(c) The Chief Wharfinger has authority to employ a special tchman at the expense of the consignee when in his judgment it is cessary to protect property of the State against fire.

(d) Pressed rags from the Orient are exempt from special tchman.

MISCELLANEOUS—Continued

HANDLING PETROLEUM PRODUCTS

(a) The storage, keeping or use of gasoline, distillate or other liquid petroleum products on premises under control of this Board, except at such localities as may be specially designated therefor, is strictly prohibited; and at such localities as may be designated therefor, same shall not be handled, except between sunrise and sunset.

(b) Vessels will be allowed to take on board gasoline or distillate only between 8 a.m. and 5 p.m. and when vessel is otherwise ready to depart. Delivery must be made from wagon to vessel direct. If the vessel is not ready to receive same the loaded wagon will not be allowed to wait on wharf but must immediately pull off same.

(c) Empty gasoline or distillate drums must be removed from the wharf at once and Wharfingers are hereby directed to notify the owners thereof to remove same.

(d) All vessels carrying oil for fuel must store the same in steel or iron tanks.

(e) No vessel carrying oil for fuel in wooden tanks or wooden compartments shall be allowed to lie alongside or make fast to any other vessel while the same is lying at any pier, or wharf, or to lie alongside or make fast to any structure under the jurisdiction of the Board of State Harbor Commissioners.

(f) All oil for fuel purposes must be delivered through a steam pump so as to pump the oil into the vessel to be supplied as quickly as possible, and all vessels carrying oil for fuel must be kept clear of rubbish, etc., which is liable to catch fire from sparks.

(g) No vessel loaded with Coalinga oil, or any other oil which will flash below 110 degrees Fahrenheit, shall be permitted to haul alongside of any vessel or structure.

(h) No vessel engaged in the business of supplying fuel oil shall be allowed when empty to haul or lie alongside any vessel, pier or wharf. Any vessel after having discharged oil must immediately haul away from vessel or structure and depart.

(i) No person, firm, association or corporation shall discharge or deposit, or shall cause or suffer to be discharged or deposited, or to pass, in or into the waters of the bay of San Francisco, any coal tar or refuse or residuary product of coal, petroleum, asphalt, bitumen or other carbonaceous material or substance. Every person, firm, association or corporation that violates the above rule will be prosecuted under the provisions of section 374½ of the Penal Code.

SELLING PERISHABLE PRODUCTS

(a) No person, firm or corporation shall be permitted to sell any fruit, vegetables, poultry, eggs, honey, game or other produce, com-

nly known as perishable products, over and upon any of the public arves or other property belonging to this State in the City and unty of San Francisco and within the jurisdiction of the Board of te Harbor Commissioners who is now or who may become a party to conspiracy, agreement or undertaking, whereby such person, firm or poration shall refuse to sell within this State to any solvent pur-ser or buy from any person whatever within this State, or who does sell impartially and at the same prices to all within this State who ire to purchase for cash without regard to their business or intended position of the products, or who exercises any discrimination what-r between buyers and sellers by reason of their occupation, affilia-ns or nonaffiliations.

(b) Holders of permits to sell perishable products on the wharves other State property under the jurisdiction of the Board must, on hand, sell to purchasers on such wharves and other State property, atoes in lots as small as ten sacks and onions in lots as small as five ks.

PORT CHARGES, HOW ENFORCED

For the purpose of enforcing the charge for dockage, tolls, wharf-aurrage, bulkhead storage, etc., on goods, wares, and merchandise ded on any wharf, pier, or thoroughfare, or remaining thereon ger than the time prescribed by the harbor regulations, the said rd of State Harbor Commissioners are authorized to take possession uch goods, wares, and merchandise, and if such charge be not paid hin two days thereafter, may remove and store the same at the rge, risk and expense of the owner or consignee thereof, or may sell same by public auction, with or without notice, at their discretion.

WHARVES, HOW CLEARED

For the purpose of keeping the wharves, piers, basins, channel, and roughfares free of obstructions, the said Commissioners shall cause ritten notice to be served on the owner, agent, consignee, or person possession of any such obstructing material or structure, or may post otice thereon, at their discretion, requiring its removal within nty-four hours thereafter; and on failure to comply therewith the rd of State Harbor Commissioners may remove, store or sell the by public auction, at their discretion. From the proceeds of any sale they shall retai all the wharfage and tolls due, with ten cent thereon, and in case of obstruction, twenty-five dollars for and every day during which the wharf, pier, o thoroughfare has obstructed, and also all the expenses attending such sale, and the lus, if any, shall be paid to the proper party. Such sale shall be e subject to immediate removal.

MISCELLANEOUS—Continued

MOTOR VEHICLES ON WHARVES AND PIERS

(a) No motor vehicle operated by gasoline, or any product of petroleum, except it be in immediate transit to or from a ferryboat, shall be admitted on any wharf or pier under the jurisdiction of the Board of State Harbor Commissioners, unless the owner or owners thereof shall have first been granted a permit by said Board for said vehicle to enter upon said wharves and piers, said vehicle to be identified by its registered number, and also by a wharf number designated by the Board.

(b) No motor vehicle operated by gasoline, or any product of petroleum, shall be entitled to a permit to enter upon the wharves and piers, under the jurisdiction of the Board of State Harbor Commissioners, unless such vehicle is to be actually engaged in the transportation of freight, to and from such wharves and piers, as a business; provided, however, that ambulances and hearses of undertaking establishments, and ambulances and other vehicles of hospitals, and of the health and police departments, whose motive power is gasoline, or any product of petroleum, may, upon the application of the owner or owners thereof, be granted permits to enter upon the wharves and piers in the transaction of their business, but shall be subject to the same restrictions as are imposed upon other motor vehicles described in these rules.

(c) The operator of a motor vehicle, to the owner of which a permit has been granted, must be prepared to produce, and must produce, when called upon by a Wharfinger, or member of the Harbor Police, said permit for inspection.

(d) Upon notification by the Secretary of the Board that any permit has been canceled or revoked, the Wharfinger, or member of the Harbor Police on duty at any wharf or pier at which the vehicle for which said permit was granted applies for entrance, must deny such entrance, and take from the vehicle the wharf number attached thereto, and shall also take up the permit granted by the Board to such vehicle.

(e) No motor vehicle, operated by gasoline, or any product of petroleum, from which is dripping any gasoline, or other oil, shall be allowed to cross or enter upon any wharf or pier or other State property under the control of the Board of State Harbor Commissioners.

(f) No gasoline, or any product of petroleum, shall be put into or taken out of any motor vehicle while same is upon a wharf or pier or upon State property adjacent thereto.

(g) No filling of motor vehicles with gasoline, or any product of petroleum, shall be permitted upon any wharf or pier under any circumstances. In case of the gasoline in any vehicle becoming exhausted, said vehicle must be hauled off State property before replenishing or refilling same with gasoline.

MISCELLANEOUS—Continued

(h) No operator of a motor vehicle using gasoline, or any product petroleum, and run by steam power, shall be permitted to light his lot light while the vehicle is on a wharf or pier or on other State roperty adjacent thereto.

(i) No motor vehicle operated by gasoline, or any product of etroleum shall be allowed to stand on any wharf or pier for an unreasnable length of time, and only when actually engaged in loading or nloading freight or passengers; and any such vehicle left standing on ich wharf or pier without the constant presence and attendance of its perator, or longer than is deemed reasonable by the Wharfinger in harge, may be removed and warehoused by such Wharfinger so in harge, or by any member of the Harbor Police.

(j) The owner, owners or operator of any motor vehicle operated y gasoline, or any product of petroleum, who shall wilfully disregard hese rules, shall be reported at once to the Board of State Harbor Comissioners, which Board may thereafter deny the offender or offenders rther admission to and transit across the State wharves and piers.

(k) Sand shall be kept in buckets, fit and available for absorbing aste oil that may fall upon the floors of the wharves and piers, and ich sand, when saturated, shall be removed at once to a safe place outde the limits of State property.

ELECTRIC CURRENT FOR POWER AND SHIP LIGHTING

All electric current used for ship lighting, pier lighting or power hall pass through the master meters of the Board of State Harbor ommissioners, and will be supplied at the following rates:

	Per kwh
(a) For the first 300 kwh used during any one month	$0.06
(b) For the next 500 kwh used during any one month	.05
(c) For all over 800 kwh used during any one month	.04
(d) For connecting up a ship with light or power circuits in cases where the ship furnishes shore cables, plugs or motor connections, the service charge will be	7.50
(e) For pier lighting in cases where a ship is temporarily berthed and using pier lights the service charge will be	7.50
(f) For extension of light or power circuits, where necessary, or to supply shore cables, plugs or motor connections the service charge will be plus time and material.	7.50
(g) For installation of sub-meter, where necessary, in addition to service charge	2.50

(h) When a ship or motor is connected as in (d) or (e) and the hip temporarily leaves the pier and returns during the same voyage, o additional service charge will be made.

MISCELLANEOUS—Continued

(i) Ships moving from one pier to another of their own volition and requiring connections shall be charged as (d), (e), (f) and/or (g) apply; but ships berthed for repairs and moved by order of the Chief Wharfinger will not be required to pay additional service charges, but shall pay time and material charges, and/or sub-meter charges as (f) and/or (g) apply.

(j) On assigned piers there shall be no service charge for connections for pier lighting or power where such service is through permanent connections.

(k) Notice for temporary connection should be sent to the Chief Engineer, Board of State Harbor Commissioners.

CRANAGE AND EQUIPMENT, PORTABLE

The Port of San Francisco is supplied with varied, extensive and modern tackle which generally is privately owned and subject to contract rates. A fleet of floating equipment makes heavy lifts of 75 and 100 tons easy, and saves expensive shifting of vessel.

HANDLING CHARGES

This work is left to each carrier or individual, either to be performed by them at cost to themselves, or subject to contract arrangements between such interested carriers or individuals and competing labor.

BELT RAILROAD

Regulations of the Board of State Harbor Commissioners in Operations of the Belt Railroad

(a) The entire cost, both material and labor, for installing connections to the Belt Railroad tracks from other railroads or private industries shall be at the expense of the applicant.

(b) When such a connection is discontinued on order of the Board of State Harbor Commissioners, the spur material may be removed by the party holding the spur at his expense and for his own use, but when abandoned or discontinued by the party holding the spur, the track and other construction and materials remaining on State property shall be and remain the property of the State.

(c) No connection shall be made with any Belt Railroad track except by permission of the Board of State Harbor Commissioners in writing.

(d) Switching or storing cars on tracks of Belt Railroad other than tracks assigned to other railroads or private industries is entirely under jurisdiction and control of Belt Railroad.

(e) When Belt Railroad tracks have been assigned to other railroads or private industries, such assigned tracks shall not be used by any other parties except on permission of the holder of the assignment and with approval of the Superintendent of the Belt Railroad.

(f) The State of California, the Board of State Harbor Commissioners and the Belt Railroad assume no risk of cars or contents while on its rails, it being understood that such risk is assumed by the railroad that owns or controls the cars or the shippers.

(g) No passengers carried on the Belt Railroad.

(h) Switching, team track and storage charges must be paid in advance by patrons who are not on the Credit List, or cars will be held for charges.

(i) Team track and storage track room under control of Belt Railroad being limited, the privilege to shipper of having cars placed on these tracks must be secured from the Superintendent of Belt Railroad in advance.

(j) Damages caused to Belt Railroad equipment by reason of defective condition of private spurs or by obstructions thereon must be fully and promptly paid for to the Board of State Harbor Commissioners.

BELT RAILROAD—Continued

(k) The Superintendent of the Belt Railroad reserves the right to discontinue service on any of the private spur tracks when same are not in a proper condition to safeguard life and equipment.

(l) Switching on Sundays and holidays will be performed in cases of emergency only, and upon previous application to the Superintendent of the Belt Railroad. The charge made for such emergency switching will be upon the basis of the tariff.

(m) The Belt Railroad can furnish on prompt notice box cars and flat cars, for the movement of commodities exclusively on the Belt Railroad tracks.

For Belt Railroad rates see specific tariff issued by Board of State Harbor Commissioners.

STATE REFRIGERATION TERMINAL

This facility situated on China Basin is provided for the purpose of furnishing shipside refrigeration for in transit cargo and the rules, regulations and charges for refrigeration service at this terminal are covered by a specific tariff issued by the Board of State Harbor Commissioners.

EXHIBIT No. 65

BOARD OF STATE HARBOR COMMISSIONERS
Ferry Building
San Francisco
California

December 13, 1939

David E. Scoll, Atty.,
U. S. Maritime Commission
Washington, D. C.

Dear Sir:

In accordance with your request of December 7th we sent you tariffs covering the charges assessed by this Board. We neglected to say at that time that the charges listed below which are assessed by the Islais Creek Grain Terminal Corporation, a tenant of this Board, are subject to the approval of this Board.

House Charges

Unloading, weighing and receiving ex cars to house or grader----------	$ .55
From Gondola cars additional ----------	.25
Unloading, weighing and receiving ex truck to house or grader----------	.50
Unloading, weighing and receiving ex barge to house or grader----------	.35
Delivery to ship direct by barge - service charge ----------	.25
Delivery FAS ship from cars, house, or craft or grader, incl.weighing--	.50
Handling rejections including weighing----------	.50
Unloading, weighing and receiving either sacked or bulk to cars or steamers in bulk direct----------	.80
Unloading, weighing and receiving bulk to cars or FAS steamer in sacks direct ----------	1.20
Loading to cars, including weighing----------	.50

Carter Disc Charge

Handling screenings including weighing----------	.50

All marking, sampling, sweeping, and reconditioning to be charged at actual labor and insurance costs and 10% Superintendence cost.

Saturday being declared as a holiday by the Warehousemen's Union there will be a charge of 12½c per ton additional for delivery to ship on Saturdays between 8:00 A.M. and 5:00 P.M.

In accordance with your request of December 7th we sent you tariffs covering the charges assessed by this Board. We neglected to say at that time that the charges listed below which are assessed by the Islais Creek Grain Terminal Corporation, a tenant of this Board, are subject to the approval of this Board.

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Unloading, weighing and receiving ex truck to house or grader	.50
Unloading, weighing and receiving ex barge to house or grader	.35
Delivery to ship direct by barge - service charge	.25
Delivery FAS ship from cars, house, or craft or grader, incl. weighing	.50
Handling rejections including weighing	.50
Unloading, weighing and receiving either sacked or bulk to cars or steamers in bulk direct	.80
Unloading, weighing and receiving bulk to cars or FAS steamer in sacks direct	1.20
Loading to cars, including weighing	.50

Carter Disc Charge

Handling screenings including weighing	.50

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Saturday being declared as a holiday by the Warehousemen's Union there will be a charge of 12½c per ton additional for delivery to ship on Saturdays between 8:00 A.M. and 5:00 P.M.

Yours very truly,

(Sgd.) M. H. Gates
Secretary

MHG:H

Before the U. S. Maritime Commission
Docket No. 555
Exhibit No. 65
Witness Dillarding
E.E. Fisher & Associates Inc.
Official Reporters
By Conklin

As per our telephone conversation of today, the difference in labor charges from the enclosed tariff and the previous tariff effective July 1st, 193[illegible] to June 30th 1940 was as follows:

Loading Reefer Cars was at the rate of 75¢ per ton. A flat charge of $5.00 for building gates and materials, regardless of whether the car was in transit or not.

Tariff also contained a rate of $5.00 for papering cars, and $3.00 for straw used in gates. Old tariff called for a minimum charge of 75¢ for each port mark.

We could not locate a copy of the old tariff, but the above mentioned changes are the only differences between the old tariff and the new one on labor charges.

Yours truly,

State Refrigeration Terminal

By Edward T Twohey

ET/MK

2384

March 6th, 1942

Mr. Hunter, Traffic Mgr.,
Board of State Harbor Commissioners,
Ferry Bldg.,
San Francisco, Calif.

As per our telephone conversation of today, the difference in labor charges from the enclosed tariff and the previous tariff effective July 1st, 193° to June 30th 1940 was as follows:

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We could not locate a copy of the old tariff, but the above mentioned changes are the only differences between the old tariff and the new one on labor charges.

LABOR CHARGES: A charge of 3¢ per box will be made for sorting boxes of apples, pears, etc., for numbers after such boxes have been stacked.

A charge of 1¢ per box will be made for sorting boxes of apples, pears, etc., for numbers, provided application for such service is made upon or before arrival of shipment at Terminal.

A charge of 1¢ per package will be made for sorting fresh table fruit for size.

A charge of 5¢ per crate will be made for sorting vegetables for size.

A charge at the prevailing wage, plus the cost of necessary materials, will be made for repairing damaged packages.

A charge of $5.00 per car, plus the cost of necessary materials, will be made for loading cars.

A charge at the prevailing wage, plus the cost of necessary materials, will be made for extra handling or other service provided upon request.

TERMINAL RECEIPTS: Merchandise for which negotiable terminal receipt has been issued will not be released except upon surrender of said receipt.

Merchandise for which non-negotiable terminal receipt has been issued will be delivered upon written orders without surrender of the receipt.

¶ The State Refrigeration Terminal, located at shipside, in the State Products Terminal, China Basin, San Francisco, is operated for the purpose of handling export tonnage, in transit, as an aid to the commerce of the port of San Francisco, and the establishment of foreign markets for perishable farm products, and receipts will be given for such intransit cargo, to indicate when and from whom such cargo is received, and the quantity and character thereof.

RULES AND REGULATIONS

No.

5 RATES—HOW APPLIED: The rates named in this tariff are per month, or fraction thereof, except as otherwise herein specifically provided.

The rates named in this tariff do not cover freight, insurance, or any other special service, unless herein specifically provided, and are based on all cargo being delivered to the State Refrigeration Terminal free of all charges.

10 LABOR CHARGES: A charge of 3¢ per box will be made for sorting boxes of apples, pears, etc., for numbers after such boxes have been stacked.

A charge of 1¢ per box will be made for sorting boxes of apples, pears, etc., for numbers, provided application for such service is made upon or before arrival of shipment at Terminal.

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A charge of 5¢ per crate will be made for sorting vegetables for size.

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Merchandise for which non-negotiable terminal receipt has been issued will be delivered upon written orders without surrender of the receipt.

RULES, REGULATIONS AND CHARGES

ISSUED BY

BOARD OF STATE HARBOR COMMISSIONERS

ADDRESS ALL COMMUNICATIONS TO

BOARD OF STATE HARBOR COMMISSIONERS

FERRY BUILDING, SAN FRANCISCO, CALIFORNIA

P. W. MEHERIN, *President*
JOS. A. MOORE
DR. CELESTINE J. SULLIVAN
Commissioners.

MARK H. GATES, *Secretary*

No. 3

Effective June 1, 1935

23662 6-35 1M

CALIFORNIA STATE PRINTING OFFICE
GEORGE H. MOORE, State Printer
SACRAMENTO, 1935

EXHIBIT No. 66

STATE REFRIGERATION TERMINAL

SAN FRANCISCO, CALIFORNIA

RULES, REGULATIONS AND CHARGES

ISSUED BY

BOARD OF STATE HARBOR COMMISSIONERS

ADDRESS ALL COMMUNICATIONS TO
BOARD OF STATE HARBOR COMMISSIONERS
FERRY BUILDING, SAN FRANCISCO, CALIFORNIA

P. W. Meherin, *President*
Jos. A. Moore
Dr. Celestine J. Sullivan
Commissioners

Mark H. Gates, *Secretary*

STATE REFRIGERATION TERMINAL See Note For Changes Continued on Old Tariff

LABOR CHARGES Effective July 1, 1940.

MARKING: (One Port Mark only)	1c	per	box
NUMBERING: (Consecutively)	1c	"	"
STRAP (1 wire)	1½c	"	"
STRAP: (2 wires)	2½c	"	"
STRAP: (1 wire - into bundles of two)	1½c	"	bundle
STRAP: (2 wires " " ")	2½c	"	"
REMOVE STRAP: (1 strap)	1c	"	box
REMOVE STRAPS: (2 straps)	1½c	"	"
SCRAPE OFF MARK:	1c	"	"
SCRAPE OFF LABELS:	2c	"	"
LABELING:	2c	"	"
STAMPING: (Size, grade or variety)	1c	"	"
SORTING & MANIFESTING: (size only) before being stacked	1½c	"	"
SORTING & MANIFESTING: (size only) after being stacked	4c	"	"
SORTING VEGETABLES: (for size only)	5c	"	crate
REEFER CARS: (Loading only) PACKAGES UP TO 35# GROSS WGT.	½c	"	box
" FROM " " TO 50#	1c	"	"
" OVER 50#	75	"	ton
REBUILDING GATES & CAR STRIPS (using shipper's material) Cars received in transit.			3.50

STRAP: (1 wire - into bundles of two)	1½c	"	bundle
STRAP: (2 wires " " "	2½c	"	"
REMOVE STRAP: (1 strap)	1c	"	box
REMOVE STRAPS: (2 straps)	1½c	"	"
SCRAPE OFF MARK:	1c	"	"
SCRAPE OFF LABELS:	2c	"	"
LABELING:	2c	"	"
STAMPING: (Size, grade or variety)	1c	"	"
SORTING & MANIFESTING: (size only) before being stacked	1½c	"	"
SORTING & MANIFESTING: (size only) after being stacked	4c	"	"
SORTING VEGETABLES: (for size only)	5c	"	crate
REEFER CARS: (Loading only) PACKAGES UP TO 35# GROSS WGT	½c	"	box
" FROM " " TO 50#	1c	"	"
" OVER 50#	.75	"	ton
REBUILDING GATES & CAR STRIPS (using shipper's material) Cars received in transit.			3.50
CAR STRIPS:	1c	"	package
GATES & BRACING:	5.00	"	car

A charge at the prevailing wage, plus the cost of necessary materials, will be made for repairing damaged packages.

A charge at the prevailing wage, plus the cost of necessary materials, will be made for extra handling or other service provided upon request.

Minimum charge for each Port Mark - .25c plus regular rate for each additional service.

(ABOVE CHARGES SUBJECT TO CHANGE WITHOUT NOTICE)

25 FRUIT, FRESH viz: GRAPES PACKED IN EXCELSIOR		First Month	Per Month thereafter
Crates: In Bundles of two -(Gross Weight 26# to 32#)			
Lot under 500 Bundles	Per bundle	10	8
" 500 " or more	" "	8	6
Crates: Single Package - (Gross Weight 13# to 16#)			
Lot under 1000 Packages	Per package	7	6
" 1000 " or more	" "	5	4

---

25 Fruit, Fresh	First Month	Per Month Thereafter
SOUTH AFRICAN CHEST (not over 28# Gross, 1.37 cu.ft. or less)		
Lot under 500 packages	9	6
Lot 500 packages or more	8	5

Item No.	COMMODITY	RATE IN CENTS		
		Per	First Month	Per Month Thereafter
5	CANNED GOODS—N.O.S. In cases or cartons or in five gallon cans, loose	Gross Weight Per 100 Pounds	25 —	12½
10	FRUIT, CITRUS viz: ORANGES, LEMONS AND GRAPE FRUIT			
	Lot under 300 boxes	Per Box	15	10
	Lot 300 boxes or more	Per Box	12½	7½
15	FRUIT, DRIED (in boxes or bags)	Gross Weight		
	Lot under 10,000 lbs.	Per 100 Pounds	25	12½
	Lot 10,000 lbs. or more	Per 100 Pounds	20	10
20	FRUIT, FRESH viz: APPLES. Standard Western Boxes, packed and wrapped			
	Lot under 50 boxes	Per Box	11	7
	Lot 50 to 300 boxes	Per Box	10	6
	Lot 300 boxes or more	Per Box	9	5
25	FRUIT, FRESH viz: GRAPES. In sawdust, lug box, not over 40 lbs. gross weight			
	Lot under 500 boxes	Per Box	10	7½
	Lot 500 boxes or more	Per Box	7	5
	Standard export chest, keg or drum, approximately 50 lbs. gross weight			
	Lot under 500 packages	Per Package	15	10
	Lot 500 packages or more	Per Package	12	8
	Standard export chest, 1.8 cu. ft. or less			
	Lot under 500 packages	Per Package	12	8
	Lot 500 packages or more	Per Package	10	6
	In lugs or crates, without sawdust or other packing material			
	Lot under 500 packages	Per Package	7	6
	Lot 500 packages or more	Per Package	6	4

15	**FRUIT, DRIED** (in boxes or bags)	Gross Weight		
	Lot under 10,000 lbs.	Per 100 Pounds	25	12½
	Lot 10,000 lbs. or more	Per 100 Pounds	20	10
20	**FRUIT, FRESH viz: APPLES.** Standard Western Boxes, packed and wrapped			
	Lot under 50 boxes	Per Box	11	7
	Lot 50 to 300 boxes	Per Box	10	6
	Lot 300 boxes or more	Per Box	9	5
25	**FRUIT, FRESH viz: GRAPES.** In sawdust, lug box, not over 40 lbs. gross weight			
	Lot under 500 boxes	Per Box	10	7½
	Lot 500 boxes or more	Per Box	7	5
	Standard export chest, keg or drum, approximately 50 lbs. gross weight			
	Lot under 500 packages	Per Package	15	10
	Lot 500 packages or more	Per Package	12	8
	Standard export chest, 1.8 cu. ft. or less			
	Lot under 500 packages	Per Package	12	8
	Lot 500 packages or more	Per Package	10	6
	In lugs or crates, without sawdust or other packing material			
	Lot under 500 packages	Per Package	7	6
	Lot 500 packages or more	Per Package	6	4
	FRUIT, FRESH viz: PEACHES. Packed and wrapped packages approximately 25 lbs. gross weight			
	Lot under 500 packages	Per Package	7	5
	Lot 500 packages or more	Per Package	6	4
		Gross Weight		
	Other packages	Per 100 Pounds	25	17½
35	**FRUIT, FRESH viz: PEARS.** Standard Boxes, packed and wrapped			
	Lot under 50 boxes	Per Box	11	7
	Lot 50 to 300 boxes	Per Box	10	6
	Lot 300 boxes or more	Per Box	9	5
	One-half boxes			
	Lot under 300 boxes	Per Box	7	5
	Lot 300 boxes or more	Per Box	6	4

Item No.	COMMODITY	RATE IN CENTS Per	First Month	Per Month Thereafter
40	FRUIT, FRESH viz: PERSIMMONS. Standard Peach Box			
	Lot under 500 boxes	Per Box	7	5
	Lot 500 boxes or more	Per Box	6	4
	Standard one layer box or lug			
	Lot under 500 boxes	Per Box	5	3
	Lot 500 boxes or more	Per Box	4	3
	Standard Persimmon Box (one-half orange)			
	Lot under 500 boxes	Per Box	8	7
	Lot 500 boxes or more	Per Box	7	5
45	FRUIT, FRESH viz: PLUMS. Packed and wrapped, packages approximately 25 lbs. gross weight			
	Lot under 500 packages	Per Package	7	5
	Lot 500 packages or more	Per Package	6	4
	Other packages	Gross Weight Per 100 Pounds	25	17½
50	FRUIT, FRESH viz: POMEGRANATE. Lug Box			
	Lot under 500 boxes	Per Box	7	6
	Lot 500 boxes or more	Per Box	6	4
	Standard Boxes			
	Lot under 500 boxes	Per Box	8	7
	Lot 500 boxes or more	Per Box	7	6
55	FRUIT, FRESH viz: TABLE. Standard Box or Crate, approximately 25 lbs. gross weight			
	Lot under 500 boxes	Per Box	7½	5
	Lot 500 boxes or more	Per Box	6	
60	MERCHANDISE — FRUITS AND VEGETABLES — N.O.S. (weighing 25 lbs. or more per cu. ft.)	Gross Weight		
	In packages	Per 100 Pounds	40	
65	NUTS, IN SHELL	Gross Weight		
	In bags or boxes	Per 100 Pounds	25	12½
70	NUT MEAT—Packages	Gross Weight		
	Lot under 20,000 lbs.	Per 100 Pounds	50	25
	Lot 20,000 lbs. or more	Per 100 Pounds	35	15
75	SHIP STORES—Miscellaneous (in packages)	Gross Weight Per 100 Pounds	50	50

45	FRUIT, FRESH viz: PLUMS. Packed and wrapped, packages approximately 25 lbs. gross weight			
	Lot under 500 packages	Per Package	7	5
	Lot 500 packages or more	Per Package	6	4
	Other packages	Gross Weight Per 100 Pounds	25	17½
50	FRUIT, FRESH viz: POMEGRANATE. Lug Box			
	Lot under 500 boxes	Per Box	7	6
	Lot 500 boxes or more	Per Box	6	4
	Standard Boxes			
	Lot under 500 boxes	Per Box	8	7
	Lot 500 boxes or more	Per Box	7	6
55	FRUIT, FRESH viz: TABLE. Standard Box or Crate, approximately 25 lbs. gross weight			
	Lot under 500 boxes	Per Box	7½	5
	Lot 500 boxes or more	Per Box	6	
60	MERCHANDISE — FRUITS AND VEGETABLES — N.O.S. (weighing 25 lbs. or more per cu. ft.)			
	In packages	Gross Weight Per 100 Pounds	40	
65	NUTS, IN SHELL			
	In bags or boxes	Gross Weight Per 100 Pounds	25	12½
70	NUT MEAT—Packages			
	Lot under 20,000 lbs.	Gross Weight Per 100 Pounds	50	25
	Lot 20,000 lbs. or more	Per 100 Pounds	35	15
75	SHIP STORES—Miscellaneous (in packages)	Gross Weight Per 100 Pounds	50	50
80	VEGETABLES—ASPARAGUS (in packages)	Gross Weight Per 100 Pounds	30	30
85	VEGETABLES—CARROTS, CABBAGE, CAULIFLOWER, TURNIPS AND SQUASH—Packages			
	Lot under 20,000 pounds	Gross Weight Per 100 Pounds	25	15
	Lot 20,000 lbs. or more	Per 100 Pounds	17½	10
90	VEGETABLES—CELERY	Per Crate	25	15
95	EGGS IN SHELL—In cases, 30 dozen each	Per Case	15	10
100	PRECOOLING—For shipments received at the State Refrigeration Terminal for precooling and remaining at said Terminal for ten days or less, a rate equal to 75% of the first month commodity rate named in this tariff will be charged, provided that application for such rate shall be made at the time of or before the arrival of the shipment at the Terminal.			

EXHIBIT No. 67

First Revised Page 1
Cancels
Original Page 1

C.R.C. No. 1

STATE TERMINAL CO. LTD.,
SAN FRANCISCO.

TERMINAL TARIFF NO. 1

Naming

RATES, CHARGES, RULES and REGULATIONS

Applying at

PIERS, WHARVES and TERMINALS

on THE SAN FRANCISCO WATER FRONT

TERMINAL TARIFF NO. 1

Naming

RATES, CHARGES, RULES and REGULATIONS

Applying at

PIERS, WHARVES and TERMINALS

on THE SAN FRANCISCO WATER FRONT

ISSUED APRIL 21, 1938 EFFECTIVE MAY 23, 1938

Issued by:
H. B. Mills, President
Channel at Third Street,
San Francisco, California.

Correction No. 245

Fourth Revised Page 2 Cancels Third Revised Page 2	STATE TERMINAL CO. LTD. Terminal Tariff No. 1	C.R.C. No. 1

CHECKING SHEET FOR TARIFF

This Tariff is issued in loose leaf form and all changes will be made by reprinting the entire page. Such reprinted pages will bear same page number as the original page and also show in upper left hand corner that it is a revised page and what page it cancels; for example - "1st revised page 15 cancels original page 15", or "2nd revised page 15 cancels 1st revised page 15", etc.

Upon the receipt of revised or new pages a check must be placed opposite the "Correction" Number (shown below) corresponding to number shown in lower left hand corner of new or changed page. If "Correction" numbers are properly checked as received, check marks will appear in consecutive order with no omissions; however, if check marks indicate that a "Correction", sheet has not been received, request should at once be made to the party issuing Tariff for a copy of same.

CORRECTION NO.	PAGE NO.	CORRECTION NO	PAGE NO.
286		300	
287		301	
288		302	
289		303	
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291		305	
292		306	
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294		308	
295		309	
296		310	
297		311	
298		312	

Upon the receipt of revised or new pages a check must be placed opposite the "Correction" Number (shown below) corresponding to number shown in lower left hand corner of new or changed page. If "Correction" numbers are properly checked as received, check marks will appear in consecutive order with no omissions; however, if check marks indicate that a "Correction" sheet has not been received, request should at once be made to the party issuing Tariff for a copy of same.

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295		309	
296		310	
297		311	
298		312	
299		313	

ISSUED October 18, 1940 EFFECTIVE November 20, 1940

Issued by
H.C. CANTELOW, Agent,
1 Drumm Street,
San Francisco, California

Correction No. 287

First Revised Page 3 Cancels Original Page 3	STATE TERMINAL CO., LTD. TERMINAL TARIFF NO. 1	CRC No. 1

Item No.		
+ 5	Application of rates.	Rates, Charges, Rules and Regulations named herein will apply for operation at all Piers, Wharves and Terminals on the San Francisco Waterfront.
10	Rules, Regulations, Dockage, Tolls - Wharfage.	For classification of trades, rules and regulations governing vessels berthing at this Terminal, charges for dockage, tolls-wharfage refer to Board of State Harbor Commissioners of the State of California Tariff No. 2, supplements to and reissues thereof.
20	"Term "Ton"	(a) Where rates are quoted per ton they will, unless otherwise specified, be computed on the basis of 2000 lbs. gross weight. (b) Where rates are shown in individual items per measurement ton, same will be per 40 cu. ft. and will be computed on outside measurement, which will be determined by using the extreme dimensions of all sides of the package.
30	Charges, when payable	The Board of State Harbor Commissioners requires ever vessel to pay to the superintendent of the wharf, before such cargo is discharged or loaded the amounts due for dockage, tolls, wharf demurrage etc., on goods, wares and merchandise discharged from or to be loaded into such vessels. Charges for supervision, watchmen, sweeping wharf, etc. and checking cargo may be collected in advance at the option of this company.
40	Charges How Enforced.	For the purpose of enforcing the charges against goods, upon which charges are delinquent and unpaid, this company may cause a notice of such delinquency to be posted on such goods, and if all charges thereon are not paid within two days thereafter, may remove and store the same in a public warehouse at the risk and expense of the owner or consignee thereof or may sell the same at public auction at its discretion.

+ Addition Neither increase nor reduction.

		on the San Francisco Waterfront.
10	Rules, Regulations, Dockage, Tolls - Wharfage.	For classification of trades, rules and regulations governing vessels berthing at this Terminal, charges for dockage, tolls-wharfage refer to Board of State Harbor Commissioners of the State of California Tariff No. 2, supplements to and reissues thereof.
20	"Term "Ton"	(a) Where rates are quoted per ton they will, unless otherwise specified, be computed on the basis of 2000 lbs. gross weight. (b) Where rates are shown in individual items per measurement ton, same will be per 40 cu. ft. and will be computed on outside measurement, which will be determined by using the extreme dimensions of all sides of the package.
30	Charges, when payable	The Board of State Harbor Commissioners requires ever vessel to pay to the superintendent of the wharf, before such cargo is discharged or loaded the amounts due for dockage, tolls, wharf demurrage etc., on goods, wares and merchandise discharged from or to be loaded into such vessels. Charges for supervision, watchmen, sweeping wharf, etc. and checking cargo may be collected in advance at the option of this company.
40	Charges How Enforced.	For the purpose of enforcing the charges against goods, upon which charges are delinquent and unpaid, this company may cause a notice of such delinquency to be posted on such goods, and if all charges thereon are not paid within two days thereafter, may remove and store the same in a public warehouse at the risk and expense of the owner or consignee thereof or may sell the same at public auction at its discretion.

+ Addition Neither increase nor reduction.

ISSUED APRIL 21, 1938 EFFECTIVE MAY 23, 1938

Issued by H. B. Mills, President,
Channel and 3rd Streets,
San Francisco, California

Correction No. 246

STATE TERMINAL CO., LTD.
Terminal Tariff No. 1

Item No.	Section 1 Rules and Regulations
	CLAIMS FOR REFUNDS - TIME LIMIT
50	Claims for refunds must be presented within 30 days from the month of billing in order to receive consideration by the Company.
	① FREE TIME FOR ASSEMBLING CARGO
☆ Δ 60-A Cancels 60	(a) Exclusive of Sundays and legal Holidays, the free time allowed for assembling cargo shall be as follows: (1) Coastwise and Inland Waterways ---------- 5 days (2) Foreign, Offshore and Intercoastal ------ 10 days (b) All cargo received is subject to demurrage rates and charges contained in Item Nos. 120 and 125 Series.
	① FREE TIME FOR REMOVING DISCHARGED CARGO
☆ L 70-A Cancels 70	(a) The maximum free time for cargo discharged exclusive of Sundays and legal Holidays shall be: (1) Coastwise and Inland Waterway ---------- 5 days (2) Foreign,Offshore and Intercoastal ------- 7 days (3) Intransit ---------- 10 days On specific order of the Chief Warfinger of the Board of State Harbor Commissioners this company is empowered at any time to shorten the free time provided herein and to cause the removal of any cargo or portion thereof, at the expense of the owner or consignee, irrespective of the free time period. (b) Wharf Demurrage ∠ Transferred to Item 72 Series.
	① WHARF DEMURRAGE
☆ Δ 72	Wharf Demurrage charge of 25¢ per ton, weight or measurement, whichever will yield the greater revenue for the first 5 days or part thereof, and 50¢ per ton for each succeeding 5 days or part thereof, will be assessed after the expiration of the free time period.
	HAZARDOUS COMMODITIES
75	The terminal shall not be required to accept for transportation or hold on wharf, any commodity that will effect the rate of Insurance or contaminate other goods or otherwise endanger property.

☆ Δ 60-A Cancels 60	(a) Exclusive of Sundays and legal Holidays, the free time allowed for assembling cargo shall be as follows: (1) Coastwise and Inland Waterways ---------- 5 days (2) Foreign, Offshore and Intercoastal ------ 10 days (b) All cargo received is subject to demurrage rates and charges contained in Item Nos. 120 and 12[illegible] Series.
☆ Δ 70-A Cancels 70	(1) FREE TIME FOR REMOVING DISCHARGED CARGO (a) The maximum free time for cargo discharged exclusive of Sundays and legal Holidays shall be: (1) Coastwise and Inland Waterway ---------- 5 days (2) Foreign, Offshore and Intercoastal ------- 7 days (3) Intransit ---------- 10 days On specific order of the Chief Warfinger of the Board of State Harbor Commissioners this company is empowered at any time to shorten the free time provided herein and to cause the removal of any cargo or portion thereof, at the expense of the owner or consignee, irrespective of the free time period. (b) Wharf Demurrage Δ Transferred to Item 72 Series.
☆ Δ 72	(1) WHARF DEMURRAGE Δ Wharf Demurrage charge of 25¢ per ton, weight or measurement, whichever will yield the greater revenue for the first 5 days or part thereof, and 50¢ per ton for each succeeding 5 days or part thereof, will be assessed after the expiration of the free time period.
75	HAZARDOUR COMMODITIES The terminal shall not be required to accept for transportation or hold on wharf, any commodity that will effect the rate of Insurance or contaminate other goods or otherwise endanger property.

(1) Shown herein as a matter of information only, and are subject to such changes as may be made by the Board of State Harbor Commissioners.

☆ Change Δ Neither Increase nor Reduction. Issued under order of the Railroad Commission of the State of California in Decision No. 29171 dated October 13, 1936

ISSUED November 28, 1936 EFFECTIVE December 5, 1936

Issued by A. V. Mattingly, Traffic Mgr.,
Channel at Third Sts.,
San Francisco, California.

Correction No. 157

122-A Cancels 122

Handling charges cover the ordinary labor and duties incident to receiving goods at place of rest in storage, stowing and delivery from storage, but do not include unloading or loading of cars, vehicles or vessels, unless so specified. Handling charges will be billed with the storage for the first period. (See Note).

NOTE: The term "STORAGE" as used herein refers to "BULKHEAD DEMURRAGE", as defined and governed by Board of State Harbor Commissioners, described and published for information purposes in Item 120 Series hereof.

HANDLING (Receiving and Delivery) CHARGES

Handling charges, as provided in this item will be assessed on cargo delivered by and/or received for specific vessel and subsequently ordered held at request of owner or carriers, and/or when declared for storage, and subject to Storage Charge: (See Note)

NOTE: Not ap plicable on cargo transhipped between ocean carriers.

Rates in cents per 2,000 lbs., unless otherwise indicated in individual item.

	Rate
☆ Merchandise, N O S	# 50

125-D Cancels 125-C

δ # Will not apply to Woodpulp board, in rolls.

Beans, Canned Goods, Dried Fruit -- Cancelled (Reissue)

Cotton, in High Density Bales (including car unloading and carloading (See Note) when destined to a pier in San Francisco) ----------per bale	25

NOTE: Carloading will be included in rate on "Block Lots" on which, when ordered out, the instructions will be for the identical lot as originally received: when shipments are ordered forwarded in lots other than originally received, viz: broken lots, an additiona charge of 12-1/2 cents per bale will be assessed.

Lumber, Hardwood, per 1000 ft. Board measure	100

130 Cancel Reissue

☆ Change δ Reduction

ISSUED March 19, 1940 EFFECTIVE April 20, 1940

Issued by JOHN HYRNE, Agent
311 California Street
San Francisco, California

Correction No. 267-

STATE TERMINAL CO., LTD.
Terminal Tariff No. 1

Item No.	SECTION 1 RULES AND REGULATIONS
	WHARVES, HOW CLEARED
☆△ 80-A Cancels 80	For the purpose of keeping the wharves, terminal and terminal thoroughfares free of obstruction, this company shall cause a written notice to be served on the owner, agent, consignee or person in possession of any such obstructing material or structure or may post a notice thereon at its discretion requiring its removal within 24 hours thereafter, and on failure to comply therewith, this company may remove and store in a public warehouse or sell the same by public auction at its discretion. From the proceeds of any such sale, this company shall retain all charges due this company with 10% added and also all the expenses attending such sale, the surplus, if any, shall be paid to the proper party. △ Such sale shall be made subject to immediate removal.
	DEFINITION OF STRAIGHT TIME AND OVERTIME
85-A Cancels 85	(a) Straight time applies between hours of 8 A.M. and 5 P.M. except on holidays. (b) Overtime applies before 8 A.M. and after 5 P.M. also for all hours on Sundays and Holidays. (See Note) Holidays New Year's — Independence Day — Columbus Day Lincoln's Birthday — Labor Day — Armistice Day Washington's Birthday — Admission Day — Thanksgiving Memorial Day — Christmas Note: When any holiday falls on Sunday, the Monday following will be observed as the holiday.

☆ Change △ Neither Increase nor Reduction

WHARVES, HOW CLEARED

☆△ 80-A Cancels 80

For the purpose of keeping the wharves, terminal and terminal thoroughfares free of obstruction, this company shall cause a written notice to be served on the owner, agent, consignee or person in possession of any such obstructing material or structure or may post a notice thereon at its discretion requiring its removal within 24 hours thereafter, and on failure to comply therewith, this company may remove and store in a public warehouse or sell the same by public auction at its discretion. From the proceeds of any such sale, this company shall retain all charges due this company with 10% added and also all the expenses attending such sale, the surplus, if any, shall be paid to the proper party. △ Such sale shall be made subject to immediate removal.

DEFINITION OF STRAIGHT TIME AND OVERTIME

85-A Cancels 85

(a) Straight time applies between hours of 8 A.M. and 5 P.M. except on holidays.

(b) Overtime applies before 8 A.M. and after 5 P.M. also for all hours on Sundays and Holidays. (See Note)

Holidays

New Year's	Independence Day	Columbus Day
Lincoln's Birthday	Labor Day	Armistice Day
Washington's Birthday	Admission Day	Thanksgiving
Memorial Day		Christmas

Note: When any holiday falls on Sunday, the Monday following will be observed as the holiday.

☆ Change △ Neither Increase nor Reduction

ISSUED November 28, 1936 EFFECTIVE December 31, 1936

Issued by A. V. Mattingly, Traffic Mgr., Channel at Third Sts., San Francisco, California.

Correction No. 158

HANDLING (Receiving and Delivery) CHARGE DEFINITION

122-A Cancels 122

Handling charges cover the ordinary labor and duties incident to receiving goods at place of rest in storage, stowing and delivery from storage, but do not include unloading or loading of cars, vehicles or vessels, unless so specified. Handling charges will be billed with the storage for the first period. (See Note).

NOTE: The term "STORAGE" as used herein refers to "BULKHEAD DEMURRAGE", as defined and governed by Board of State harbor Commissioners, described and published for information purposes in Item 120 Series hereof.

HANDLING (Receiving and Delivery) CHARGES

Handling charges, as provided in this item will be assessed on cargo delivered by and/or received for specific vessel and subsequently ordered held at request of owner or carriers, and/or when declared for storage, and subject to Storage Charge: (See Note)

NOTE: Not applicable on cargo transhipped between ocean carriers.

	Rates in cents per 2,000 lbs., unless otherwise indicated in individual item.	Rate
* 125-C Cancels 125-B	Merchandise, N.O.S. ----------	50
	Beans) Canned Goods) Merchandise, N.O.S. Applies ---------- Dried Fruit)	Cancelled
	Cotton, in High Density Bales (including car unloading and carloading (See Note) when destined to a pier in San Francisco) ---------- Per Bale	25
	NOTE: Carloading will be included in rate on "Block Lots" on which, when ordered out, the instructions will be for the identical lot as originally received: when shipments are ordered forwarded in lots other than originally received, viz: broken lots, an additional charge of 12½ cents per bale will be assessed.	
	Lumber, Hardwood, per 1000 ft. Board Measure	100
130	Cancel Reissue	

* Change. Reduction

(*)
(C)(N)
88 CLASSIFICATION OF TRADES:

Vessels, the trades in which they engage, and the cargo which they handle, are hereby classified as shown below, according to the ports or points between which the vessel operates, for the purpose of applying the provisions of this tariff, except as otherwise provided in Board of State Harbor Commissioners for the Port of San Francisco, Cal. Tariff No. 2, supplements thereto or successive issues thereof: (See Item No. 10 Series of this tariff)

(a) COASTWISE: Service along the Pacific Coast of the United States between the Mexican and Canadian borders, including such service when via British Columbia ports.

(b) INLAND WATERWAY: Service between San Francisco, Cal., and ports or points located on San Francisco Bay and inland waterways tributary thereto, but not via the Pacific Ocean.

(c) INTERCOASTAL: Service between San Francisco Bay ports and ports in the United States on the Gulf of Mexico or Atlantic Ocean.

(d) HAWAIIAN: Service between San Francisco Bay ports and ports in the Hawaiian Islands.

(e) ALASKAN: Service between San Francisco Bay ports and ports in Alaska.

(f) TRANSPACIFIC: Service between San Francisco Bay ports and points west of the 170th Meridian of West Longitude.

(g) FOREIGN: Service other than heretofore described.

(h) OFFSHORE: Where this term is used it means other than "Coastwise" and "Inland Waterway".

(a) COASTWISE: Service along the Pacific Coast of the United States between the Mexican and Canadian borders, including such service when via British Columbia ports.

(b) INLAND WATERWAY: Service between San Francisco, Cal., and ports or points located on San Francisco Bay and inland waterways tributary thereto, but not via the Pacific Ocean.

(c) INTERCOASTAL: Service between San Francisco Bay ports and ports in the United States on the Gulf of Mexico or Atlantic Ocean.

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(e) ALASKAN: Service between San Francisco Bay ports and ports in Alaska.

(f) TRANSPACIFIC: Service between San Francisco Bay ports and points west of the 170th Meridian of West Longitude.

(g) FOREIGN: Service other than heretofore described.

(h) OFFSHORE: Where this term is used it means other than "Coastwise" and "Inland Waterway".

(C)-Change. (N)-No increase or reduction. (*)-Addition.

ISSUED SEPTEMBER 26, 1935 EFFECTIVE NOVEMBER 1, 1935

Correction No. 73

Issued by
A. V. MATTINGLY, Traffic Manager
3rd and Channel Sts., San Francisco

TERMINAL TARIFF NO. 1

Naming

RATES, CHARGES, RULES AND REGULATIONS

Applying at

San Francisco, California

◊ ITEM NO. 1.

(a) All rates stated in cents per 2,000 pounds or in cents per other designated unit, including minimum rates and minimum charges, named in Section 4 of this tariff, for loading and unloading of cars and trucks are increased six and one-half per cent (6½%), subject to paragraph (b) hereof.

(b) In applying the percentage provided in paragraph (a) hereof extensions will be carried to the tenth of a cent only and fractions of less than five-tenths of a cent (0.5¢) shall be dropped; fractions of five-tenths of a cent (0.5¢) or greater shall be increased to the next whole cent.

The form of this supplement is permitted by authority of the Railroad Commission of the State of California Permission TC No. 299 of April 8, 1941.

◊ - Increase. Issued under authority of the Railroad Commission of the State of California, No. 63-16507 of April 8, 1941.

ISSUED April 8, 1941 EFFECTIVE May 10, 1941

Issued by

H. C. CANTELOW, Agent
1 Drumm Street
San Francisco, California

Item No.	SECTION 3 CHARGES APPLYING TO CARGO
115-B Cancels 115-A	① DEMURRAGE, DEFINITION OF The charge assessed against merchandise which remains on the Terminal beyond the free period. (See Item 70 Series)
120-C Cancels 120-B	① DEMURRAGE The following rates will apply to all merchandise held in transit when destined beyond the confines of San Francisco Bay. (a) Rates are on a tonnage basis of 2000 lbs. weight or 40 cu. ft. measurement, whichever will yield the greater revenue except Canned Goods, Dried Fruits, Beans, Rice and kindred products, which will be on a basis of 2000 lbs. weight. (See Item 125 Series)

	Per Ton
(b) Toll (10 days free time)	◊ $ .25
(c) Bulkhead demurrage, first 20 days following free time	.15
Bulkhead demurrage, next 30 days or fraction thereof	.25
Bulkhead demurrage, next 30 days or fraction thereof	.30
Bulkhead demurrage, each succeeding 30 days or fraction thereof	.30

① Shown herein as a matter of information only, and are subject to such changes as may be made by the Board of State Harbor Commissioners.

◊ Increase. Effective December 1, 1939. Issued under order of the Railroad Commission of the State of California No. 63-15679 and 15-23758 of November 28, 1939.

(1) DEMURRAGE

The following rates will apply to all merchandise held in transit when destined beyond the confines of San Francisco Bay.

(a) Rates are on a tonnage basis of 2000 lbs. weight or 40 cu. ft. measurement, whichever will yield the greater revenue except Canned Goods, Dried Fruits, Beans, Rice and kindred products, which will be on a basis of 2000 lbs. weight. (See Item 125 Series)

120-C Cancels 120-B

	Per Ton
(b) Toll (10 days free time)	◊ $ .25
(c) Bulkhead demurrage, first 20 days following free time	.15
Bulkhead demurrage, next 30 days or fraction thereof	.25
Bulkhead demurrage, next 30 days or fraction thereof	.30
Bulkhead demurrage, each succeeding 30 days or fraction thereof	.30

(1) Shown herein as a matter of information only, and are subject to such changes as may be made by the Board of State Harbor Commissioners.

◊ Increase. Effective December 1, 1939. Issued under order of the Railroad Commission of the State of California No. 63-15679 and 15-23758 of November 28, 1939.

ISSUED November 28, 1939

EFFECTIVE December 30, 1939
(Except as noted in individual items)

Correction No. 265

Issued by JOHN BYRNE, Agent,
311 California Street,
San Francisco, Calif.

SECTION 3 CHARGES APPLYING TO CARGO (Cont'd)

Item No.	
120-A Cont'd	(D) (E) (F) (G) Cancel. Reissue
122-A Cancels 122	**HANDLING (Receiving and Delivery) CHARGE DEFINITION** Handling charges cover the ordinary labor and duties incident to receiving goods at place of rest in storage, stowing and delivery from storage, but do not include unloading or loading of cars, vehicles or vessels, unless so specified. Handling charges will be billed with the storage for the first period. (See Note). NOTE: The term "STORAGE" as used herein refers to "BULKHEAD DEMURRAGE", as defined and governed by Board of State Harbor Commissioners, described and published for information purposes in Item 120 Series hereof.
	HANDLING (Receiving and Delivery) CHARGES Handling charges, as provided in this item will be assessed on cargo delivered by and/or received for specific vessel and subsequently ordered held at request of owner or carriers, and/or when declared for storage, and subject to Storage Charge: (See Note) NOTE: Not applicable on cargo transhipped between ocean carriers.
☆	Rates in cents per 2,000 lbs., unless otherwise indicated in individual item. — Rate
	Merchandise, N O S ---------- # 50
125-D Cancels 125-C	# Will not apply to Woodpulp board, in rolls. Beans, Canned Goods, Dried Fruit -- Cancelled (Reissue) Cotton, in High Density Bales (including car unloading and carloading (See Note) when destined to a pier in San Francisco) ----------per bale 25 NOTE: Carloading will be included in rate on "Block Lots" on which, when ordered out, the instructions will be for the identical lot as originally received: when shipments are ordered forwarded in lots other than originally received, viz: broken lots, an additiona charge of 12-1/2 cents per bale will be assessed.
	Lumber, Hardwood, per 1000 ft. Board measure ---------- 100

SECTION 3
CHARGES APPLYING TO CARGO (Cont'd)

Item No.

Demurrage
(Continued from First Revised Page 10)

120-A
C cont'd (D) (E) (F) (G) Cancel. Reissue

HANDLING (Receiving and Delivery) CHARGE DEFINITION

122-A
Cancels
122 Handling charges cover the ordinary labor and duties incident to receiving goods at place of rest in storage, stowing and delivery from storage, but do not include unloading or loading of cars, vehicles or vessels, unless so specified. Handling charges will be billed with the storage for the first period. (See Note).

NOTE: The term "STORAGE" as used herein refers to "BULKHEAD DEMURRAGE", as defined and governed by Board of State harbor Commissioners, described and published for information purposes in Item 120 Series hereof.

HANDLING (Receiving and Delivery) CHARGES

Handling charges, as provided in this item will be assessed on cargo delivered by and/or received for specific vessel and subsequently ordered held at request of owner or carriers, and/or when declared for storage, and subject to Storage Charge: (See Note)

NOTE: Not applicable on cargo transhipped between ocean carriers.

*	Rates in cents per 2,000 lbs., unless otherwise indicated in individual item.	Rate
125-C Cancels 125-B	Merchandise, N.O.S. ----------	50
	Beans) Canned Goods) Merchandise, N.O.S. Applies ---------- Dried Fruit)	Cancelled
	Cotton, in High Density Bales (including car unloading and carloading (See Note) when destined to a pier in San Francisco) ---------- Per Bale	25

Supplement No. 1

to

TERMINAL TARIFF NO. 1

Naming

RATES, CHARGES, RULES AND REGULATIONS

Applying at

San Francisco, California

◊ ITEM NO. 1.

(a) All rates stated in cents per 2,000 pounds or in cents per other designated unit, including minimum rates and minimum charges, named in Section 4 of this tariff, for loading and unloading of cars and trucks are increased six and one-half per cent (6½%), subject to paragraph (b) hereof.

(b) In applying the percentage provided in paragraph (a) hereof extensions will be carried to the tenth of a cent only and fractions of less than five-tenths of a cent (0.5¢) shall be dropped; fractions of five-tenths of a cent (0.5¢) or greater shall be increased to the next whole cent.

The form of this supplement is permitted by authority of the Railroad Commission of the State of California Permission TC No. 299 of April 8, 1941.

STATE TERMINAL CO., LTD.
Terminal Tariff No. 1

Item No.	SECTION 7 ABSORPTIONS/EXCEPTIONS
1210-A Cancels 1210	Handling charges will not be assessed by this Company when merchandise received is to be held at bulkhead demurrage rates and is consigned to a specific vessel or vessels when said vessel or vessels are scheduled to, and sail from this terminal within thirty days from date of arrival of merchandise provided the car unloading revenue to this company for unloading said merchandise amounts to not less than $8.00 per car.
1215-A Cancels 1215	Cancel. Reissue
1220-A Cancels 1220	Cancel. Reissue
☆ 1225-B Cancels 1225-A	◊ Cancel. No provision in effect.
1230-A Cancels 1230	Cancel. Reissue
1235-A Cancels 1235	Cancel. Reissue

☆ Change ◊ Increase; Issued under authority of the Railroad Commission of the State of California, No. 63-13315 of February 19, 1937.

1210-A Cancels 1210	Handling charges will not be assessed by this Company when merchandise received is to be held at bulkhead demurrage rates and is consigned to a specific vessel or vessels when said vessel or vessels are scheduled to, and sail from this terminal within thirty days from date of arrival of merchandise provided the car unloading revenue to this company for unloading said merchandise amounts to not less than $8.00 per car.
1215-A Cancels 1215	Cancel. Reissue
1220-A Cancels 1220	Cancel. Reissue
☆ 1225-B Cancels 1225-A	◊ Cancel. No provision in effect.
1230-A Cancels 1230	Cancel. Reissue
1235-A Cancels 1235	Cancel. Reissue

☆ Change ◊ Increase; Issued under authority of the Railroad Commission of the State of California, No. 63-13315 of February 19, 1937.

ISSUED FEBRUARY 24, 1937 EFFECTIVE MARCH 29, 1937

Issued by A. V. Mattingly, Traffic Mgr.,
Channel at Third Streets,
San Francisco, California.

Correction No. 182

No Supplements to this Tariff will be issued except for the purpose of cancelling the Tariff.

GOLDEN GATE TERMINALS

TERMINAL TARIFF NO. 1

NAMING

RATES, CHARGES, RULES and REGULATIONS

GOVERNING TERMINAL OPERATIONS

at

SAN FRANCISCO, CALIFORNIA

G O L D E N G A T E T E R M I N A L S

TERMINAL TARIFF NO. 1

NAMING

RATES, CHARGES, RULES and REGULATIONS

GOVERNING TERMINAL OPERATIONS

at

SAN FRANCISCO, CALIFORNIA

ISSUED JULY 27. 1936 EFFECTIVE AUGUST 3, 1936

Issued by R. M. Grose, Agent,
112 Market Street,
San Francisco, California.

RULE NO.	SECTION 1 RULES AND REGULATIONS
10-A Cancels 10	RESPONSIBILITY OF TERMINAL (a) All merchandise received is held at owner's risk. Rates named herein do not include fire or other insurance. (b) This company is not responsible for loss or damage caused by fires (from any cause), climatic or weather conditions, riots, strikes, insurrections or from inherent or perishable qualities of the merchandise or from other causes beyond its control, nor for loss or damage caused by leakage, pilferage, theft, vermin, or water unless such loss or damage be caused by failure of the Terminal to exercise ordinary care and diligence. Δ(c) NON-LIABILITY OF THIS TERMINAL FOR SHIPPER'S FAILURE TO RESERVE SPACE OR CARRIER'S FAILURE TO LOAD GOODS. In no event shall this terminal be liable for loss, damage or delay arising from the failure of the shipper to arrange for space on the transporting vessel, or from the failure of any carrier to load and transport goods on the particular date or vessel nominated by the shipper or owner of such goods. In the event of any such failure, such goods shall be held subject to all of the applicable charges and provisions of this tariff. On specific order of the Board of State Harbor Commissioners this company reserves the right to terminate intransit demurrage privilege and to cause removal thereof of any or all merchandise at the expense of owner.
20	RULES, REGULATIONS, DOCKAGE, TOLLS - WHARFAGE. For classification of trades, rules and regulations governing vessels berthing at this Terminal, charges for dockage, tolls-wharfage refer to Board of State Harbor Commissioners of the State of California Tariff No. 2, supplements to and reissues thereof.
30	TERM "TON" (a) Where rates are quoted per ton they will, unless otherwise specified, be computed on the basis of 2000 lbs. gross weight. (b) Where rates are shown in individual items per measurement ton, same will be per 40 cu. ft. and will be computed on outside measurement, which will be determined by using the extreme dimensions of all sides of the package.

	In no event shall this terminal be liable for loss, damage or delay arising from the failure of the shipper to arrange for space on the transporting vessel, or from the failure of any carrier to load and transport goods on the particular date or vessel nominated by the shipper or owner of such goods. In the event of any such failure, such goods shall be held subject to all of the applicable charges and provisions of this tariff. On specific order of the Board of State Harbor Commissioners this company reserves the right to terminate intransit demurrage privilege and to cause removal thereof of any or all merchandise at the expense of owner.
20	RULES, REGULATIONS, DOCKAGE, TOLLS - WHARFAGE. For classification of trades, rules and regulations governing vessels berthing at this Terminal, charges for dockage, tolls-wharfage refer to Board of State Harbor Commissioners of the State of California Tariff No. 2, supplements to and reissues thereof.
30	TERM "TON" (a) Where rates are quoted per ton they will, unless otherwise specified, be computed on the basis of 2000 lbs. gross weight. (b) Where rates are shown in individual items per measurement ton, same will be per 40 cu. ft. and will be computed on outside measurement, which will be determined by using the extreme dimensions of all sides of the package.
40	CHARGES, WHEN PAYABLE: The Board of State Harbor Commissioners requires every vessel to pay to the superintendent of the wharf, before such cargo is discharged or loaded the amounts due for dockage, tolls, wharf demurrage etc., on goods, wares and merchandise discharged from or to be loaded into such vessels. Charges for supervision, watchmen, sweeping wharf etc. and checking cargo may be collected in advance at the option of this company.

Δ Neither increase or reduction.

ISSUED SEPTEMBER 19, 1939 EFFECTIVE OCTOBER 21, 1939

Issued by JOHN BYRNE, Agent,
311 California Street
San Francisco, California.

Correction No. 20

GOLDEN GATE TERMINALS
Terminal Tariff No. 1

Rule No.	SECTION 1 . RULES AND REGULATIONS
	CHARGES - HOW ENFORCED.
50	For the purpose of enforcing the charges against goods, upon which charges are delinquent and unpaid, this company may cause a notice of such delinquency to be posted on such goods, and if all charges thereon are not paid within two days thereafter, may remove and store the same in a public warehouse at the risk and expense of the owner or consignee thereof or may sell the same at public auction at its discretion.
	CLAIMS FOR REFUNDS - TIME LIMIT.
60	Claims for refunds must be presented within 30 days from the month of billing in order to receive consideration by the company.
	RULES, TIME FOR ASSEMBLING CARGO.
70	(A) Exclusive of Sundays and legal Holidays, the free time allowed for intransit cargo to Foreign, Offshore and Intercoastal Trade, shall be 10 days. (B) All cargo received is subject to demurrage rates and charges contained in Paragraphs A and C, Item Nos 50, 70 and 80.
	FREE TIME FOR REMOVING DISCHARGED CARGO.
80	(A) The maximum free time for cargo discharged for local delivery shall be 5 days; Foreign and Offshore 7 days; exclusive of Sundays and Holidays. On specific order of the Chief Wharfinger of the Board of State Harbor Commissioners this company is empowered at any time to shorten the free time provided herein and to cause the removal of any cargo or portion thereof, at the expense of the owner or consignee, irrespective of the free period. (B) A wharf demurrage charge of 25¢ per ton, weight or measurement, whichever will yield the greater revenue for the first 5 days or part thereof, and 50¢ per ton for each succeeding 5 days or part thereof, will be assessed after the expiration of the free time period.
	COMMODITIES WHICH ARE HAZARDOUS OR WHICH MAY CONTAMINATE OTHER GOODS.
90	The terminal shall not be required to accept for transportation or hold on wharf, any commodity that will effect the rate of insurance or contaminate other goods or otherwise endanger property.

	CLAIMS FOR REFUNDS - TIME LIMIT.
60	Claims for refunds must be presented within 30 days from the month of billing in order to receive consideration by the company.
	RULES, TIME FOR ASSEMBLING CARGO.
70	(A) Exclusive of Sundays and legal Holidays, the free time allowed for intransit cargo to Foreign, Offshore and Intercoastal Trade, shall be 10 days. (B) All cargo received is subject to demurrage rates and charges contained in Paragraphs A and C, Item Nos 50, 70 and 80.
	FREE TIME FOR REMOVING DISCHARGED CARGO.
80	(A) The maximum free time for cargo discharged for local delivery shall be 5 days; Foreign and Offshore 7 days; exclusive of Sundays and Holidays. On specific order of the Chief Wharfinger of the Board of State Harbor Commissioners this company is empowered at any time to shorten the free time provided herein and to cause the removal of any cargo or portion thereof, at the expense of the owner or consignee, irrespective of the free period. (B) A wharf demurrage charge of 25¢ per ton, weight or measurement, whichever will yield the greater revenue for the first 5 days or part thereof, and 50¢ per ton for each succeeding 5 days or part thereof, will be assessed after the expiration of the free time period.
	COMMODITIES WHICH ARE HAZARDOUS OR WHICH MAY CONTAMINATE OTHER GOODS.
90	The terminal shall not be required to accept for transportation or hold on wharf, any commodity that will effect the rate of insurance or contaminate other goods or otherwise endanger property.

ISSUED JULY 27, 1936 EFFECTIVE AUGUST 3, 1936

Issued by R. M. Groso, Agent,
112 Market Street
San Francisco, California.

GOLDEN GATE TERMINALS
Terminal Tariff No. 1

Rule No.	SECTION 1 RULES AND REGULATIONS
	WHARVES, HOW CLEARED
100	For the purpose of keeping the wharves, terminal and terminal thoroughfares free of obstruction, this company shall cause a written notice to be served on the owner, agent, consignee or person in possession of any such obstructing material or structure or may post a notice thereon at its discretion requiring its removal within 24 hours thereafter, and on failure to comply therewith, this company may remove and store in a public warehouse or sell the same by public auction at its discretion. From the proceeds of any such sale, this company shall retain all charges due this company with 10% added and also all the expenses attending such sale, the surplus, if any, shall be paid to the proper party.
	DEFINITION OF STRAIGHT TIME AND OVERTIME
	(a) Straight time applies between hours of 8 a.m. and 5 p. m. except on holidays. (b) Overtime applies before 8 a.m. and after 5 p.m. also for all hours on Sundays and holidays. (See Note)
110	Holidays
	New Year's, Lincoln's Birthday, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Admission Day, Columbus Day, Armistice Day, Thanksgiving, Christmas
	Note - When any holiday falls on Sunday, the Monday following will be observed as the holiday.

	DEFINITION OF STRAIGHT TIME AND OVERTIME
	(a) Straight time applies between hours of 8 a.m. and 5 p. m. except on holidays. (b) Overtime applies before 8 a.m. and after 5 p.m. also for all hours on Sundays and holidays. (See Note)
110	Holidays
	New Year's — Independence Day — Columbus Day Lincoln's Birthday — Labor Day — Armistice Day Washington's Birthday — Admission Day — Thanksgiving Memorial Day — Christmas
	Note - When any holiday falls on Sunday, the Monday following will be observed as the holiday.

ISSUED JULY 27, 1936 EFFECTIVE AUGUST 3, 1936

Issued by R. M. Grose, Agent.
112 Market Street
San Francisco, California.

GOLDEN GATE TERMINALS
Terminal Tariff No. 1

Rule No.	SECTION 1 RULES AND REGULATIONS
	CLASSIFICATION OF TRADES
120	Vessels, the trades in which they engage, and the cargo which they handle, are hereby classified as shown below, according to the ports or points between which the vessel operates, for the purpose of applying the provisions of this tariff, except as otherwise provided in Board of State Harbor Commissioners for the Port of San Francisco, Cal. Tariff No. 2, supplements thereto or successive issues thereof: (See Item No. 120 Series of this tariff) (a) COASTWISE: Service along the Pacific Coast of the United States between the Mexican and Canadian borders, including such service when via British Columbia ports. (b) INLAND WATERWAY: Service between San Francisco, Cal., and ports or points located on San Francisco Bay and inland waterways tributary thereto, but not via the Pacific Ocean. (c) INTERCOASTAL: Service between San Francisco Bay ports and ports in the United States on the Gulf of Mexico or Atlantic Ocean. (d) HAWAIIAN: Service between San Francisco Bay ports and ports in the Hawaiian Islands. (e) ALASKAN: Service between San Francisco Bay ports and ports in Alaska. (f) TRANSPACIFIC: Service between San Francisco Bay ports and points west of the 170th Meridian of West Longitude. (g) FOREIGN: Service other than heretofore described. (h) OFFSHORE: Where this term is used it means other than "Coastwise" and "Inland Waterway".

(a) COASTWISE: Service along the Pacific Coast of the United States between the Mexican and Canadian borders, including such service when via British Columbia ports.

(b) INLAND WATERWAY: Service between San Francisco, Cal., and ports or points located on San Francisco Bay and inland waterways tributary thereto, but not via the Pacific Ocean.

120

(c) INTERCOASTAL: Service between San Francisco Bay ports and ports in the United States on the Gulf of Mexico or Atlantic Ocean.

(d) HAWAIIAN: Service between San Francisco Bay ports and ports in the Hawaiian Islands.

(e) ALASKAN: Service between San Francisco Bay ports and ports in Alaska.

(f) TRANSPACIFIC: Service between San Francisco Bay ports and points west of the 170th Meridian of West Longitude.

(g) FOREIGN: Service other than heretofore described.

(h) OFFSHORE: Where this term is used it means other than "Coastwise" and "Inland Waterway".

ISSUED JULY 27, 1936 EFFECTIVE AUGUST 3, 1936

Issued by R. M. Grose, Agent,
112 Market Street
San Francisco, California.

1911

C.R.C. No. 1	GOLDEN GATE TERMINALS Terminal Tariff No. 1	First Revised Page 10 Cancels Original .... Page 10

Item No.	SECTION 1 CHARGES APPLYING TO CARGO
	RATES OF TOLL ON SHIPMENTS FROM OR TO CARS ON PIERS.
30-A Cancels 30 ◊	Merchandise discharged from cars, while spotted on piers, or merchandise landed on piers from cars, to be removed from piers by teams or trucks, must pay the following State toll: Merchandise landed on piers or to cars by trucks or teams to be removed by cars must pay following State toll: Merchandise ex cars, providing same is removed within 5 days ---------- $0.15 per ton If not removed within 5 days ---------- .25 per ton Merchandise ex trucks, providing same is loaded in cars within 5 days ---------- .15 per ton If not loaded within 5 days ---------- .25 per ton
40	**DEMURRAGE, DEFINITION OF** The charge assessed against merchandise which remains on the Terminal beyond the free period. (See Item 50)
50-A Cancels 50	**DEMURRAGE** PER TON (a) TOLL (10 days free time) ---------- ◊ $0.25 (b) Bulkhead demurrage, first 20 days following free time - .15 Bulkhead demurrage, next 30 days or fraction thereof — .25 Bulkhead demurrage, next 30 days or fraction thereof -- .30 Demurrage rates beyond the above periods shall be 30¢ per ton for each 30 days or fraction thereof. NOTE: The above charges are assessed and collected by the Board of State Harbor Commissioners.

◊Increase. Effective December 1, 1939. Issued under Authority of the Railroad Commission of the State of California No. 63-15679 and 15-23758 of November 28, 1939.

	Merchandise ex cars, providing same is removed within 5 days ---------- $0.15 per ton If not removed within 5 days ---------- .25 per ton Merchandise ex trucks, providing same is loaded in cars within 5 days ---------- .15 per ton If not loaded within 5 days ---------- .25 per ton
40	**DEMURRAGE, DEFINITION OF** The charge assessed against merchandise which remains on the Terminal beyond the free period. (See Item 50)
50-A Cancels 50	**DEMURRAGE** PER TON (a) TOLL (10 days free time) ---------- ◊ $0.25 (b) Bulkhead demurrage, first 20 days following free time - .15 Bulkhead demurrage, next 30 days or fraction thereof — .25 Bulkhead demurrage, next 30 days or fraction thereof -- .30 Demurrage rates beyond the above periods shall be 30¢ per ton for each 30 days or fraction thereof. NOTE: The above charges are assessed and collected by the Board of State Harbor Commissioners.

◊Increase. Effective December 1, 1939. Issued under Authority of the Railroad Commission of the State of California No. 63-15679 and 15-23758 of November 28, 1939.

ISSUED November 29, 1939 — EFFECTIVE December 30, 1939 (Except as noted in individual items)

Correction No. 23 — Issued by JOHN BYRNE, Agent, 311 California Street, San Francisco, California.

GOLDEN GATE TERMINALS
Terminal Tariff NO. 1

Item No.	SECTION 2 CHARGES APPLYING TO CARGO
	DEMURRAGE ON BONDED MERCHANDISE
	Δ (a) When demurrage privileges are desired or required on Bonded Merchandise, the rates for same shall be on the basis of one-hundred-fifty per cent (150%) of rates as provided for in Paragraph (b), Item No. 50 Series, subject to additional charges for handling, as shown in this Item. (See Note)
	(b) Handling charge of $1.00 per hour per man employed will be made on shipments moved between the Bonded Area and vessels, when: (See Note)
	1. The inbound vessel does NOT absorb the cost of delivering shipments to place of rest in the Bonded Area and the cost of piling such shipments.
☆ 60-A Cancels 60	2. The outbound vessel does NOT absorb the cost of receiving shipments from place of rest in the Bonded Area and cost of moving such shipments.
	Δ (c) Handling charge of $1.00 per hour per man employed will be made on shipments moved between the Bonded Area and railroad cars or trucks, when the Golden Gate Terminals does NOT perform the loading or unloading of such railroad cars or trucks as provided for in its Tariff No. 1, C.R.C. No. 1, supplements thereto and successive issues thereof. (See Note)
	(d) Handling charge of $1.00 per hour per man employed will be made on shipments transferred from the Free Area to the Bonded Area or from the Bonded Area to the Free Area, as the case may be. (See Note)
	NOTE: Δ The term handling as used herein, refers to labor performed on the part of the Golden Gate Terminals.

☆ Change Δ Neither Increase or Reduction

Δ (a) When demurrage privileges are desired or required on Bonded Merchandise, the rates for same shall be on the basis of one-hundred-fifty per cent (150%) of rates as provided for in Paragraph (b), Item No. 50 Series; subject to additional charges for handling, as shown in this Item. (See Note)

(b) Handling charge of $1.00 per hour per man employed will be made on shipments moved between the Bonded Area and vessels, when: (See Note)

1. The inbound vessel does NOT absorb the cost of delivering shipments to place of rest in the Bonded Area and the cost of piling such shipments.

2. The outbound vessel does NOT absorb the cost of receiving shipments from place of rest in the Bonded Area and cost of moving such shipments.

☆ 60-A Cancels 60

Δ (c) Handling charge of $1.00 per hour per man employed will be made on shipments moved between the Bonded Area and railroad cars or trucks, when the Golden Gate Terminals does NOT perform the loading or unloading of such railroad cars or trucks as provided for in its Tariff No. 1, C.R.C. No. 1, supplements thereto and successive issues thereof. (See Note)

(d) Handling charge of $1.00 per hour per man employed will be made on shipments transferred from the Free Area to the Bonded Area or from the Bonded Area to the Free Area, as the case may be. (See Note)

NOTE: Δ The term handling as used herein, refers to labor performed on the part of the Golden Gate Terminals.

☆ Change Δ Neither Increase or Reduction

ISSUED AUGUST 18, 1936 EFFECTIVE SEPTEMBER 19, 1936

Issued by R. M. Grose, Agent,
112 Market Street,
San Francisco, California.

Correction No. 1

2414-2416

1153

Item No.	SECTION 2 CHARGES APPLYING TO CARGO
70	HANDLING(Receiving and Delivery) CHARGE DEFINITION Handling charges cover the ordinary labor and duties incident to receiving goods at place of rest in storage, stowing and delivery from storage, but do not include unloading or loading of cars, vehicles or vessels, unless so specified. Handling charges will be billed with the storage for the first period. (See Note) NOTE: The term "STORAGE" as used herein refers to "BULKHEAD DEMURRAGE", as defined and governed by Board of State Harbor Commissioners, described and published for information purposes in Item 50 Series hereof.
☆ 80-B Cancels 80-A	HANDLING (Receiving and Delivery) CHARGES Handling charges, as provided in this item will be assessed on cargo delivered by and/or received for specific vessel and subsequently ordered held at request of owner or carriers, and/or when declared for storage, and subject to Storage Charge. (See Note) NOTE: Not applicable on cargo transhipped between ocean carriers.

Rates in cents per 2,000 lbs., unless otherwise indicated in individual item.	RATE
Cotton, in High Density Bales (including car unloading and car loading (See Note) when destined to a pier in San Francisco)---------- Per Bale	25
NOTE: Carloading will be included in rate on "Block Lots" on which, when ordered out, the instructions will be for the identical lot as originally received: when shipments are ordered forwarded in lots other than originally received, viz: broken lots, an additional charge of 12-1/2 cents per bale will be assessed.	
Lumber, Hardwood, per 1000 ft Board Measure ----------	100

☆ Change ♁ Reduction

HANDLING (Receiving and Delivery) CHARGES

Handling charges, as provided in this item will be assessed on cargo delivered by and/or received for specific vessel and subsequently ordered held at request of owner or carriers, and/or when declared for storage, and subject to Storage Charge: (See Note)

NOTE: Not applicable on cargo transhipped between ocean carriers.

☆ 80-B Cancels 80-A

Rates in cents per 2,000 lbs., unless otherwise indicated in individual item.	RATE
Cotton, in High Density Bales (including car unloading and car loading (See Note) when destined to a pier in San Francisco)---------- Per Bale	25
NOTE: Carloading will be included in rate on "Block Lots" on which, when ordered out, the instructions will be for the identical lot as originally received: when shipments are ordered forwarded in lots other than originally received, viz: broken lots, an additional charge of 12-1/2 cents per bale will be assessed.	
Lumber, Hardwood, per 1000 ft Board Measure ----------	100

☆ Change ♂ Reduction

ISSUED JANUARY 26, 1938 EFFECTIVE FEBRUARY 26, 1938

Issued by JOHN BYRNE, Agent,
311 California Street,
San Francisco, California

Correction No. 17

3417

EXHIBIT No 71a

1125

BOARD OF PORT COMMISSIONERS

OF THE

PORT OF OAKLAND

TARIFF NO. 1

(CANCELS ALL TARIFFS IN EFFECT PRIOR TO JUNE 20, 1929)

NAMING

RATES, CHARGES, RULES AND REGULATIONS

APPLYING AT

MUNICIPAL TERMINALS

OF

OAKLAND, CALIFORNIA

BOARD OF PORT COMMISSIONERS

James J. McElroy, President

Eugene W. Roland, Vice-President

Dr. George C. Perdee, Vice-President

Claire V. Goodwin

Edward J. Smith

A. H. Abel, Port Manager

M. D. McCarl, Traffic Manager

GENERAL OFFICES

Grove Street Pier, Oakland, California.

BOARD OF PORT COMMISSIONERS

OF THE

PORT OF OAKLAND

T A R I F F N O. 1

NAMING

RATES, CHARGES, RULES AND REGULATIONS

(Subject to change without notice)

APPLYING AT THE FOLLOWING

MUNICIPAL TERMINALS OF THE CITY OF OAKLAND, CALIFORNIA

* Outer Harbor -- Foot of Fourteenth Street

Grove Street -- Foot of Grove Street

Market Street -- Foot of Market Street

Ninth Avenue -- Foot of Ninth Avenue

Dennison Street -- Foot of Dennison Street -- (Lumber only)

Livingston Street -- Foot of Livingston Street-- "

Oakland Municipal Airport -- Foot of Jones Avenue

(Also at certain facilities under lease or assignment to private operators)

* Change

Adopted November 4, 1929 Effective November 12, 1929

(Correction No. 2)

1428

Third Revised Page 1
Cancels
Second Revised Page 1

Tariff No. 1 PORT OF OAKLAND

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EXPLANATION OF ABBREVIATIONS

Bbl.--------Barrel
B.M.--------Board Measure
C.L.--------Carload
CP 20-------Cost Plus 20%
In.---------Inch
K.D.--------Knocked Down
S.U.--------Set Up
Lbs.--------Pounds
L.C.L.------Less than Carload
M.F.B.M.---1000 ft. Board Measure
Min.--------Minimum
N.O.S.------Not otherwise specified
Pkg.--------Package

Adopted January 18, 1937 Effective January 20, 1937

(Correction No. 260)

CHECKING SHEET FOR TARIFF

This Tariff is issued in loose-leaf form, and all changes will be m by reprinting the entire page. Such reprinted pages will bear same page ber as the original page and also show in upper right hand corner that it is a ised page and what page it cancels. For example, first revised page 10 cancels ginal page 10, or second revised page 10 cancels first revised page 10, etc.

Upon receipt of revised or new pages, a check must be placed osite the "Correction" number (shown below) corresponding to number shown in er left hand corner of new or changed page. If "Correction" numbers are perly checked as received, check marks will appear in consecutive order, with missions. If check marks indicate that a "Correction" sheet has not been re- ved, request should at once be made to the office of the Board for a copy of e.

RRECTION UMBER	CORRECTION NUMBER	CORRECTION NUMBER	CORRECTION NUMBER	CORRECTION NUMBER
31	331	341	361	381
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50	340	360	380	400

Adopted November 22, 1937 Effective November 22, 1937
Correction No. 301

• 5 - CLASSIFICATION OF TRADES:

A. COASTWISE: Service along the Pacific Coast of the United States between the Mexican and Canadian Borders.
Exception: Coastwise vessels operating via British Columbia ports shall be classed as Coastwise.

B. INLAND WATERWAY: Service between Oakland and points located upon the Bays, Rivers and other Inland Waterways of California, but not via the Pacific Ocean.

C. INTERCOASTAL: Service between Oakland and ports in the United States along the Gulf of Mexico or Atlantic Ocean.

D. HAWAIIAN: Service between Oakland and the Hawaiian Islands.

E. ALASKAN: Service between Oakland and Alaska.

F. TRANSPACIFIC: Service between Oakland and points west of the 170th Meridian of West Longitude.

G. FOREIGN: Service other than heretofore described.

H. OFFSHORE: Where this term is used it refers to trades other than Coastwise and Inland Waterway.

10 - TERM "ITEM":

The term "Item" as used herein shall be understood as being synonymous with the term "Section."

15 - TERM "TERMINAL":

The term "Terminal" as used herein shall include "Pier", "Wharf", "Dock", Public Landing" or other terminal structures.

DEFINITIONS (Continued)

-B- SERVICE CHARGE:

The charge assessed against operators of vessels which load or discharge cargo for use of terminal facilities and/or for performing one or more of the following services. The service charge is in addition to dockage and/or toll charges, if any, which may be assessed pursuant to the provisions of this tariff.

A. Arrange berth for vessel.

B. Arrange for cargo space on pier.

C. Check cargo to or from vessel as required.

D. Receive outbound cargo from shippers.

E. Deliver inbound cargo to consignees.

F. Make up dock manifests covering cargo loaded aboard vessels.

G. Prepare over, short and damage reports.

H. Order cars.

I. Give information to shippers and consignees regarding cargo, sailing and arrival dates of vessels, etc.

J. Lighting piers.

- DOCKAGE:

The charge assessed against a vessel for berthing at a terminal facility, or for making fast to another vessel which is berthed at a terminal facility.

- TOLLS:

The charge for cargo conveyed on, over or through a terminal facility or loaded or discharged while vessel is berthed at a terminal facility. This charge will be assessed against and collected from the steamship company, who will either absorb same or collect it from shippers or consignees. Inbound cargo, on which tolls have been assessed, and which has not been removed from the terminal, may be reshipped from the same terminal or from any other Municipal Terminal of Oakland without being assessed further tolls, except when Coastwise or Inland Waterway cargo is reshipped to Offshore destination, the Offshore vessel shall pay the difference between the Coastwise or Inland Waterway tolls and the full Offshore tolls.

• 35 -C FREE TIME:

The time allowed for assembling cargo for outbound water movement, or for removing cargo discharged from vessels or other watercraft before the assessment of storage charges. Unless otherwise specified in individual items, 10 days free time, exclusive of Sundays and holidays, will be allowed. Free time commences at 8:00 A.M. of the first day following the day freight is unloaded from railroad cars or vehicles or following the day vessel completes discharging.

Exception No. 1: When freight moving under through rates from Hawaiian Islands to Intercoastal or Foreign destinations is delivered by the Hawaiian vessel after the final receiving date of the Intercoastal or Foreign vessel at terminals operated by the Board, such freight shall be allowed free time (but not less than 10 days exclusive of Sundays and Holidays) to and including the final receiving date at Terminals operated by the Board of the next vessel of the same Intercoastal or Foreign Line which is to receive freight at such terminals for the same destination.

Exception No. 2: When vessels are delayed, due to stress of weather, accidents, and in cases of breakdowns or other emergencies, the Port Manager may extend the free time to such number of days as in his judgment is warranted and equitable in each individual case.

Exception No. 3: CANCELED.

40 - STORAGE:

The charge assessed against cargo remaining on terminal property after the free time period. Storage of cargo is at the discretion of the Port Manager.

45 - LOADING:

The charge for loading freight into railroad cars or vehicles. Rates shown herein for direct loading between vessels and open cars are not assessed by the Board. Such rates are shown only as information to shippers and are assessed and collected by steamship companies for their own account.

50 - UNLOADING:

The charge for unloading freight from railroad cars or vehicles. Rates shown herein for direct unloading between open cars and vessels are not assessed by the Board. Such rates are shown only as information to shippers and are assessed and collected by steamship companies for their own account.

95 - TERM "TON"

(a) When the term "ton" is used in this tariff, it will mean 2,000 pounds gross weight, unless otherwise specified.

(b) When the term "measurement ton" is used in this tariff, it will mean 40 cubic feet. Measurement tons may be based on ship's manifest or computed by using the extreme dimensions on all sides of the package.

60-C- OVERTIME:

Rates named in this tariff for service involving labor are based on current rates of pay for straight time under ordinary labor and traffic conditions. When services are performed during overtime between 5:00 p.m. and 8:00 a.m. and on Sundays and holidays, for the account of shippers, transportation companies or other parties the difference in rates of pay for straight time and overtime based on established hourly rates, plus 10 per cent will be assessed against parties for whose account such services are performed. This charge is in addition to rates named for services on a straight time basis. Does not apply on services for which cost plus is named for straight time work.

Exception No. 1: When clerks are ordered by ocean carriers and required to stand by, full established hourly rates of pay plus 10 per cent will be billed. When clerks are called but not used, they will be allowed two hours' time and steamship companies will be billed for such time on basis of full established hourly rates of pay plus 10 per cent.

Exception No. 2: Overtime for barging companies and inland waterway carriers will be between 7:00 p.m. and 8:00 a.m. and on Sundays and holidays. The charge for checking and supervision during such hours will be on basis of full established hourly rates paid checkers.

65-A- HOLIDAYS:

When the term "holidays" is used in this Tariff, it will include the following days only. (See Note)

New Year's	Independence Day	Armistice Day
Lincoln's Birthday	Labor Day	Thanksgiving
Washington's Birthday	Admission Day	Christmas
Memorial Day	#Columbus Day	

#Note: When any holiday falls on Sunday, the Monday following will be observed as the holiday.

- TERM "BOARD":

The term "Board" as used herein shall mean the Board of Port Commissioners of the City of Oakland, a municipal corporation of the State of California, also herein referred to as the Port of Oakland, and shall be understood as being interchangeable with the term "City of Oakland", the said Board being the legislative and administrative body of said city with authority to act for and represent it in all matters pertaining to the operation and governing of the port and its facilities. The Port Manager is and shall be in respect to the matters herein mentioned the executive officer and managering authority of such Board.

Item No. RULES AND REGULATIONS

75 - APPLICATION OF RATES:

The rates, charges, rules and regulations named in this Tariff or in corrections thereto, apply on all freight on hand or received at terminals on and after effective date of this Tariff or effective date of corrections thereto or reissues thereof.

80 - WHEN CHARGES ARE PAYABLE:

All charges are due and payable as they accrue. The Port Manager may, at his discretion, require charges which are assessed against the vessel, its owners, operators or agents to be paid before the vessel leaves its berth. The Port Manager may also require the payment of charges accrued against cargo to be paid before delivery of such cargo from the terminals.

85 - CHARGES, HOW ENFORCED:

For the purpose of enforcing the payment of charges named in this Tariff on cargo handled over or stored on the Municipal facilities, the Board may take possession of such cargo, and may remove and store same at the charge, risk and expense of the owner or consignee thereof and/or may sell the goods by public auction, and/or pursue such other remedies as may be provided by law.

90 - TRANSFER OF FREIGHT TO OTHER FACILITIES:

Storage of goods accepted as transit shipments will be at the discretion of the Port Manager, and the right is reserved upon expiration of free time period or in case of shut-out cargo upon clearance of vessel from the terminal to transfer freight to public or private facilities, to other locations within terminal or to other receptacles at the charge, risk and expense of the owner, consignee or steamship company, according to responsibility.

95 - COST PLUS:

Charges for labor and material not specifically provided for will be on basis of actual cost plus 20%.

Item No. RULES AND REGULATIONS (Continued)

100 - MINIMUM CHARGE:

The minimum charge for storage of a single shipment will be 50¢ per month or fraction thereof. The minimum charge for any service or combination of services for which an invoice is rendered will be 50¢.

105 - MANIFEST TO BE FURNISHED:

The masters or agents of vessels discharging or loading cargo must furnish promptly to terminal superintendents appointed by the Board, copies of their inbound or outbound manifests showing consignees and consignors, weights or measurements of the various items and basis on which freight charges are assessed. The Board reserves the right to audit all manifests and to use such audits as basis for charges.

110 - PERSONS ON BOARD VESSELS TO ACT ON ORDERS OF TERMINAL SUPERINTENDENTS:

(a) Vessels must at all times have on board at least one person in charge with authority to take such action in any emergency as may be demanded by the Terminal Superintendent.

(b) A vessel must shift or go into the stream at its own expense, when so ordered by the Terminal Superintendent, who shall have power to enforce removal at the expense of the vessel.

(c) The master, agent or owner of a vessel refusing or neglecting to obey the orders of the Terminal Superintendent in any matter pertaining to the regulation of the harbor, or removal or stationing of such vessel, is guilty of a misdemeanor, and liable to a fine not exceeding $300.00, or imprisonment not exceeding one hundred days, or both.

115 - LIGHTS AT NIGHT:

Vessels, barges, etc., while anchored or moored in the harbor must at all times of the night show lights.

120 - REMOVAL OF PERISHABLES AND UNDESIRABLE CARGO OR MATERIAL:

The Port Manager may, at his discretion, cause the removal of perishables, cargo which is liable to damage other cargo, bulky freight or other undesirable cargo or material, with or without notice, to another location within the terminal, or to private facilities at the risk and expense of the owner. Rubbish or other waste materials must be removed from the terminal by the party placing it there; otherwise it will be removed by the Terminal Superintendent at the expense of the party responsible.

No substance that will sink or form an obstruction to navigation or become a nuisance shall be deposited in the waters of the harbor without first obtaining permission from the War Department.

125 - EXPLOSIVES, COMBUSTIBLES, INFLAMMABLES, ETC.

(a) No gun powder or other explosives shall be discharged onto or loaded from any terminal structure, vessel, barge or other floating equipment, whether publicly or privately owned, within the corporate limits of the City of Oakland. Nor shall any vessel, barge or other floating equipment carrying gun powder or other explosives, at any time be permitted to anchor or remain in any water area or channel, nor be tied, moored or otherwise made fast to any waterfront structures within the corporate limits of the City of Oakland. Explosives meant herein are defined in paragraph 1503 of the Regulations of the Interstate Commerce Commission for the transportation of explosives. (These are quoted and referred to in the Federal Rules and Regulations on "Anchorage Grounds". Anchorage Area No. 13 - Explosives Anchorage - has been set aside and designated by the United States District Engineer, San Francisco, as the official area in which explosives may be handled in San Francisco Bay District. The enforcement of the Federal rules and regulations referred to are under the jurisdiction of the Captain of the Port, San Francisco, California.)

(b) Acids, combustibles and inflammables shall not be permitted to remain over night on any terminal structure operated by the Board. Unless removed by owners or consignees by 5:00 o'clock P.M. of each day, the Terminal Superintendent may have them removed at the expense of whom it may concern.

No.

HANDLING OF PETROLEUM PRODUCTS:

(a) The storing, keeping or use of gasoline, distillate or other liquid petroleum products on premises under direct control of the Board, except at such localities as may be specially designated therefor, is strictly prohibited. At such localities as may be designated therefor, same shall not be handled except between sunrise and sunset.

(b) Vessels will be allowed to take on board gasoline and distillate only between 8:00 A.M. and 5:00 P.M. and when vessel is otherwise ready to depart. Trucks or wagons containing gasoline or distillate for delivery to vessel will not be permitted to remain on terminal property if vessel is not ready to receive such gasoline or distillate.

(c) Empty gasoline or distillate drums must be removed from terminal property at once.

(d) No person, firm, association or corporation shall discharge or deposit, or shall cause or suffer to be discharged or deposited, or to pass, in or into the waters of the bay of San Francisco, any coal tar or refuse or residuary product of coal, petroleum, asphalt, bitumen or other carbonaceous material or substance.

ESTIMATED WEIGHTS ON PETROLEUM AND PETROLEUM PRODUCTS:

When not shipped in cases, barrels, etc., and when actual weight or measurement is not obtainable, petroleum and petroleum products, except crude, fuel or gas oil will be subject to estimated weight of 6.6 lbs. per gallon. Crude, fuel and gas oil will be subject to estimated weight of 7.4 lbs. per gallon.

RESPONSIBILITY:

The Board will not be responsible for loss or damage caused by fire; frost; heating; leakage; evaporation; natural shrinkage; wastage or decay; animals; insects; leakage or discharge from fire protection system; breakdown of plant, machinery or equipment; floats, logs or piling required in breasting vessels away from wharves or piers; dampness; riots; strikes; war; insurrection; shortage of labor; insufficient notification; the elements, or any causes unavoidable or beyond its control.

The Board will not assume any responsibility for loss of lumber, lumber products, scrap metal or other bulk commodities handled or stored on uncovered facilities.

hange

pted March 27, 1939 Effective March 27, 1939

Tariff No. 1 PORT OF OAKLAND

RULES AND REGULATIONS (Continued)

Item No.	
#141 -	RESPONSIBILITY: (continued) The Board will not be liable for loss, damage, or delay arising from the failure of the shipper to arrange for space on the transporting vessel, or from the failure of carrier to load or transport goods on the particular date or vessel nominated by the shipper or owner, of such goods, or on any date or vessel. In the event of any such failure, such goods shall be held subject to all of the applicable charges and provisions of this tariff.
145 -	CARGO HANDLED DIRECT BETWEEN VESSEL AND RAILROAD CARS: When no charge for carloading or unloading is assessed by this Board on cargo handled direct between vessels and railroad cars (open), no responsibility will be assumed by the Board for overloading or improper loading of cars, nor condition of freight handled in this manner, and the Board reserves the right to state what cars shall be handled alongside vessel.
150 -	INSURANCE: Rates named herein do not include insurance.
155 -	DEMURRAGE ON CARS: Unless the Board is directly responsible for delay in loading or unloading cars, it will not assume any responsibility for demurrage charges which may accrue against such cars.
160 -	SMOKING PROHIBITED: No smoking will be allowed on any terminal structure.

Addition

Adopted October 2, 1939 Effective October 2, 1939
(Correction No. 351)

Third Revised Page 14
Cancels
Second Revised Page 14

Tariff No. 1 — PORT OF OAKLAND

Item No.	ABSORPTIONS
165	FREIGHT NOT ARRIVING IN TIME TO CONNECT WITH VESSEL: When freight which has been booked for a specific vessel, scheduled to receive cargo at a Municipal Terminal, arrives too late to connect with the vessel at such terminal but before departure of the vessel from San Francisco Bay, the "Board" may, at the discretion of the Port Manager, absorb the cost of transportation or diversion charge from the terminal for which cargo was booked to another terminal in Oakland, Alameda or San Francisco at which vessel is to load cargo.
•170-A	ABSORPTION OF DIFFERENTIAL IN SWITCHING CHARGES (SEE NOTE) When the railroad switching charges between industries located within the Oakland switching district and the Municipal Terminals exceeds the switching charges between such industries and the private terminals of Oakland or Alameda, the difference in such switching charges will be absorbed by the "Board". Note: Will not apply on Lumber; Bark; Lath; Piling; Shingles or Ties.
180	ABSORPTION OF DIVERSION CHARGE ON CARLOAD FREIGHT: When carloads of freight which are destined to terminals at Alameda, Oakland, Richmond and/or San Francisco, are diverted to a Municipal Terminal, by or for the benefit of the Port of Oakland, the "Board" may, at the discretion of the Port Manager, absorb the diversion charges assessed by the rail carriers.

•Change

Adopted February 20, 1939 — Effective February 20, 1939

(Correction No. 330)

1120

Tariff No. 1 | PORT OF OAKLAND | Third Revised Page 18 cancels Second Revised Page 18

Item No. | ABSORPTIONS (Continued)

185 **ABSORPTIONS ON LESS THAN CARLOAD SHIPMENTS:**

(a) When the cost of transporting L.C.L. shipments of freight between the Municipal Terminals and points of origin or destination exceeds the cost of transporting such shipments between other terminals on San Francisco Bay and such points of origin or destination, the Board may, at the discretion of the Port Manager, absorb the difference in such transportation charges.

(b) When, in order to secure the movement of part of a carload of freight over the Municipal facilities, it is necessary to absorb the transportation charges on the balance of the car, the Board may, at the discretion of the Port Manager, absorb the cost of transportation on the freight required to make up the carload.

190 **CONSOLIDATION CHARGES:**

When a shipment of freight is handled partly over the Municipal facilities and the balance is handled over some other facility on San Francisco Bay, the Board may, at the discretion of the Port Manager, absorb the consolidation charges which are assessed by the steamship company, provided a sufficient portion of the shipment is handled over the Municipal facilities to warrant such absorption

MISCELLANEOUS CHARGES

		Rate in Cents per 2000 lbs.
#193	**COAL:**	
	Sacking, Sewing and Weighing	150
#194	**FREIGHT TRANSFER SERVICE CHARGE:**	
	Service charge on freight (see exception) received at piers and wharves from rail car or truck for delivery to rail car or truck, or for transfer between highway trucks of between highway truck and city carrier or privately owned truck.	50
	Exception: Will not apply on rejected shipments of dried fruit to be returned to shipper's plant.	
	Does not include any labor for handling cargo.	

Addition

Adopted October 16, 1939 | Effective October 20, 1939

(Correction No. 352)

2433

Item No. MISCELLANEOUS CHARGES

195-C- **DOCK EQUIPMENT:**

Dock equipment at risk of users may be furnished by the Board at its convenience, at the following rates per hour or fraction thereof:

2-wheel cargo trucks	$0.02 each
4-wheel " "	0.03 "
Electric piling machines, exclusive of operator	0.75 "

197-B- **SIDETRACKING LUMBER:**

All lumber and lumber products discharged onto the open dock at the Ninth Avenue Terminal must be discharged onto blocks and removed immediately by means of a lumber carrier from within reach of ship's tackle. All lumber not so removed by consignee or his agent will be moved back to rear portion of the dock by the Board at expense of the consignee. The charge for this service will be 25¢ per M.F.B.M.

198-A- **SUPERVISION CHARGE:**

When vessels load or discharge lumber or lumber products during overtime between 5:00 p.m. and 8:00 a.m., or on Sundays or holidays, on which no "Service Charge" is assessed, a charge for supervision at the rate of $1.75 per hour will be assessed against the steamship operator. A minimum of two hours' time will be charged for when work is started and completed during overtime.

*200 **ELECTRIC CURRENT FOR POWER AND SHIP LIGHTING:**

All electric current used for power or ship lighting must pass through the master meters of the Board and will be supplied at the following rates:

		Per K.W.H.
(a)	For the first 300 K.W.H.	$0.06
(b)	For the next 500 K.W.H.	0.05
(c)	For the next 800 K.W.H.	0.04
(d)	For all over 1600 K.W.H. (R)	0.03
(e)	For connecting up a ship with light or power circuits in cases where the ship furnishes shore cables, plugs or motor connections, the service charge will be	$7.50
(f)	For extension of light or power circuits, where necessary, or to supply shore cables, plugs or motor connections, the service charge will be.... plus time and material.	$7.50
(g)	For installation of submeter, where necessary, in addition to service charge	$2.50
(h)	When a ship or motor is connected as in (e), and the ship temporarily leaves the terminal and returns during the same voyage, no additional service charge will be made.	

Tariff No. 1 — PORT OF OAKLAND — Ninth Revised Page Cancels Eighth Revised Page

Item No. — MISCELLANEOUS CHARGES (Continued)

200 Cont'd — ELECTRIC CURRENT FOR POWER AND SHIP LIGHTING: (Cont'd)

(h) Ships moving from one pier to another of their own volition and requiring connections, shall be charged as provided for in (d), (e) and/or (f), but ships berthed for repairs and moved by order of the terminal superintendent, will not be required to pay additional service charges, but shall pay in lieu thereof time and material charges and/or submeter charges as provided for in (e) and/or (f).

205-A — WATER: Charge for water furnished vessels will be as follows:

First 1300 cubic feet -	$1.08 per 100 cubic feet
Next 2,000 cubic feet -	.259 " " " "
Next 30,000 " " -	.227 " " " "
All over 33,300 cu.ft.-	.194 " " " "
Minimum charge	- $2.70

When city hose is furnished, same will be at user's risk.

*** 208-A — ENCLOSURE RECEIPT FOR POOL CAR SHIPMENTS:** CANCEL

210- — CHECKING:

When freight is checked to or from railroad cars for the account of the Railroad Company, the charge shall be 10¢ per ton.

215-E — TAKING AND RELEASING LINES:

When these services are performed for the account of the carriers, the charge shall be:

During regular working hours .....95¢ per man per hour
Minimum charge 95¢ per man.
During overtime hours .....$1.40 per man per hour
Minimum charge $1.40 per man. Two hours time will be assessed when men are paid for two hours

217-A — RECONDITIONING FLOUR:

The charge for reconditioning flour shall be as follows:

Size	Resack and bring to correct weight	Sift, resack and bring to correct weight
5#	4¢ per sack	6¢ per sack
10#	6¢ " "	8¢ " "
24#	7½¢ " "	12½¢ " "
49#	12½¢ " "	20¢ " "
98#	20¢ " "	35¢ " "

* Change

Adopted October 16, 1939 — Effective October 20, 193
(Correction No. 353)

SERVICE CHARGES
RATES IN CENTS PER 2000 LBS. UNLESS OTHERWISE SPECIFIED

FOREIGN - INBOUND

e No.	Commodity	Cents
0-C	Cargo, N.O.S.:	
	(a) In bulk, ex vessel direct to barge or car	(A) 20
	(b) Ex vessel direct to barge or open car	(A) 40
	(c) Other than described in paragraphs (a) and (b)	(A) 75
7-A	Balls, grinding, iron or steel, loose	(A) 42½
0-B	Cement	(A) 40
5-B	Copra, in sacks	(A) 40
9-C	Fertilizers, Viz: Ammonia Phospate, Sulphate of Ammonia, Cyanamid, Nitrates, Phosphates, Potash, Sulphate of Potash, Urea and other chemical or prepared fertilizers.	(A) 40
3-A	Iron and Steel, Viz.:	
	Bar; Plate; Sheet; Structural; Pipe, wrought iron or steel	(A) 60
	Sheet Steel in packages weighing 1000 lbs. each, or more	(A) 55
5-A	Lumber, per M.F.B.M. when for transhipment via Ocean-going vessel	(A) 80
1-A	Nuts, for oil pressing purposes	(A) 40
5-C	Oil Cake Meal, in sacks	(A) 40
5-E	Paper and Paper Products, Viz.:	
	Boxboard; Fibreboard; Tray; Waste; Wrapping	(A) 40
	Newsprint	(A) 40
	Woodpulp	(A) 40
7-A	Peat Moss	(A) 67½
1-C	Rags	(A) 40
2-B	Seed, in sacks	(A) 40
5-B	Sugar	(A) 40
3-B	Tinplate	(A) 50
7-B	Beans; Cotton; Cutch; Hemp; Peanuts; Rice: When for transhipment via ocean-going vessel	(A) 40

(A) Increase

Adopted May 27, 1940 Effective June 15, 1940
(Correction No. 365)

SERVICE CHARGES
RATES IN CENTS PER 2000 LBS. UNLESS OTHERWISE SPECIFIED

Item No.	Commodity	Cents
	TRANS-PACIFIC - INBOUND	
259-1A	Cargo, N.O.S.	60
259-2A	Cargo, N.O.S., ex vessel direct to open car or barge	40
259-3A	Cargo, in bulk, ex vessel direct to car or barge	20
259-4A	Ammonia, Sulphate of	40
259-5A	Copra, in sacks	40
	Copra, in bulk, when stevedored ex vessel with mechanical equipment located on shore	20
259-6A	Meals and Meal Cake, viz.: Animal, Fish, Vegetable	40
259-7	Nuts, for Oil pressing purposes	(R) 40
259-8A	Pig Iron, ex vessel direct to open car or barge	20
259-9A	Rags	40
259-10A	Seed	40
259-11A	Sugar	40
259-12A	Beans; Cutch; Hemp; Peanuts; Rice; Cotton. (See Note)	40
	Lumber, per M.F.B.M. (See Note)	60
	Note: When for transshipment via ocean-going vessel.	
	FOREIGN - OUTBOUND	
260-C	All cargo, N.O.S.	55
262-B	Barley; Oats	40
267-C	Copra, in bags	40
	Copra, in bulk, when stevedored ex vessel with mechanical equipment located on shore	20
268-B	Copper Slabs, direct from car to vessel	40
269-B	Meal and Meal Cake, Viz.: Animal; Fish; Vegetable	40
270-B	Lumber, per M.F.B.M.	60
272-B	Iron and Steel Articles, Viz.: Bar; Plate; Rails; Sheet; Structural, direct from car to vessel	40
275-B	Nitrates	40
277-B	Oil, in bulk, direct from car to vessel	20
280-B	Salt Cake	40
282-B	Wheat	40

(R) Reduction

Adopted July 22, 1940
(Correction No. 371)

Effective July 23, 1940

SERVICE CHARGES (Continued)
RATES IN CENTS PER 2000 LBS. UNLESS OTHERWISE SPECIFIED

Item No.	Commodity	Cents
	TRANS-PACIFIC - OUTBOUND	
83-1A	Cargo, N.O.S.	(A) 60
83-2B	Cargo, N.O.S., ex barge or open car direct to vessel	(A) 40
83-3B	Ammonia, Sulphate of	(A) 40
83-4A	Boxboard	(A) 42½
83-5C	Cotton	(A) 55
83-6A	Lumber, per M.F.B.M.	(A) 60
83-7A	Oil, in bulk, ex barge or car direct to vessel	(A) 20
83-8B	Petroleum Products, in packages	(A) 42½
83-9A	Scrap Material:	
	(a) Ex dock to vessel	(A) 35
	(b) Ex barge or open car direct to vessel	(A) 20
	HAWAIIAN - INBOUND	
85-C	Cargo, N.O.S.	(A) 55
	HAWAIIAN - OUTBOUND	
90-D	Cargo, N.O.S.	(A) 55
91	Cement, building	(R) 40
92-B	Oil, in bulk, direct from car to vessel	(A) 20
	INTERCOASTAL - INBOUND	
96-D	Cargo:	
	(a) N.O.S., other than described in paragraphs (b) and (c)	(A) 75
	(b) Ex vessel direct to barge or open car	(A) 40
	(c) N.O.S., in bulk, ex vessel direct to barge or car	(A) 20
96-B	Automobiles, or other vehicles, S.U. on wheels, weighing not over 4,000 pounds, per unit----------Each	(A) 120
96-A	Chemicals, Viz.: Ammoniated Phosphate; Cyanamid; Soda Products, in bags	(A) 80
96A	Clay, in bags	(A) 60
96-B	Fibreboard, in bundles	(A) 50

(INTERCOASTAL-INBOUND CONTINUED ON NEXT PAGE)

Addition (A) Increase (R) Reduction

Adopted May 27, 1940
(Correction No. 365)

Effective June 15, 1940

SERVICE CHARGES (Continued)
RATES IN CENTS PER 2000 LBS. UNLESS OTHERWISE SPECIFIED

Item No.	Commodity	Cents
	INTERCOASTAL - INBOUND (Continued)	
306-A	Fibreboard, in bundles, when consigned to Howard Terminal, not checked by terminal employees and removed promptly from the terminal	25
306-B	Fuller's Earth, in pkgs., in lots of 500 tons or more	(A) 50
307-C	Pig Iron, ex vessel direct to open car or barge	(A) 40
308-A	Iron and Steel, Viz.: Bars; Pipe, wrought iron or steel; Plates; Sheets; Structural	(A) 60
309-B	Pipe, cast iron, pressure (not including soil pipe)	(A) 55
#310	Pulpboard, in rolls, lots of 250 tons or more	(R) 50
311-B	Sheet Steel, in packages of 1000 lbs. each, or over	(A) 55
312-A	Shells, Oyster, in bags	(A) 60
313-A	Slate, crushed, in bags	(A) 60
315-C	Tinplate	(A) 80
	INTERCOASTAL - OUTBOUND	
320-C	Cargo, N.O.S.	(A) 55
325-B	Copper Slabs, direct from car to vessel	32½
330-B	Lumber, per M.F.B.M.	(A) 60
332-B	Beans; Copra; Cutch, Hemp; Oil Cake; Meal; Peanuts; Rags; Seed; When received ex Foreign or Trans-Pacific vessel	(A) 40
333-B	Oil, in bulk, direct from car to vessel	(A) 20

#Addition (A) Increase (R) Reduction

Adopted May 27, 1940
(Correction No. 386)

Effective June 15, 1940

SERVICE CHARGES (Continued)
RATES IN CENTS PER 2000 LBS. UNLESS OTHERWISE SPECIFIED

Item No.	Commodity	Cents
	COASTWISE - INBOUND (Will also apply on traffic from Canadian Pacific Coast Ports)	
335-B	Cargo, N.O.S.	
	(a) In bulk, direct from vessel to barge or car	(A) 20
	(b) Ex vessel direct to barge or open car	(A) 40
	(c) Other than described in paragraphs (a) and (b)	
	Carload	(A) 50
	Less than carload	(A) 75
340-B	Automobiles, or other vehicles, S.U. on wheels, each	(A) 120
345-C	Box Shooks and Crate Material	(A) 42½
347-B	Fish Meal	(A) 42½
350-C	Flour; Feed; Cereals	(A) 35
355-H	Lumber (Softwood):	
	(a) Handled through shed, per M.F.B.M.	(A) 60
	(b) Handled over uncovered facilities:	
	Lumber; Ties; Posts; Bark and Piling	Free
	Lath; Shingles	Free
360-D	Paper Products, viz.: Boxboard, Fibreboard, Newsprint Pulp, Tray, Waste and Wrapping	(A) 40
365-B	Pig Lead, N.O.S.	(A) 42½
	Pig Lead, ex vessel direct to car	(A) 35
370-B	Potatoes	(A) 42½
	COASTWISE - OUTBOUND (Will also apply on traffic to Canadian Pacific Coast Ports)	
375-C	Cargo, N.O.S.:	
	(a) Ex car direct to vessel	(A) 40
	(b) Other than described in paragraph (a):	
	Carload	(A) 42½
	Less than carload	(A) 55
377-B	Asphalt, emulsified, ex car direct to vessel	(A) 20
380-B	Automobiles, or other vehicles, set up on wheels, each	(A) 120
385-C	Cement (Portland); Salt; Salt Cake; Sand; Sugar;	
	(a) Ex car or barge direct to vessel	(A) 30
	(b) Ex dock to vessel	(A) 42½
390-B	Flour; Feed; Cereals	(A) 42½
392-A	Oil, in bulk, ex car or barge direct to vessel	(A) 20

(A) Increase

Adopted May 27, 1940
(Correction No. 367)

Effective June 15, 1940

SERVICE CHARGES (Continued)
RATES IN CENTS PER 2000 LBS. UNLESS OTHERWISE SPECIFIED

Item No.	Commodity	
	ALASKAN - INBOUND	
395-C	All Cargo	(A)
	ALASKAN - OUTBOUND	
400-C	All Cargo	(A)
	INLAND WATERWAY - INBOUND	
	(Will also apply on traffic from Monterey, Calif.)	
405-B	Cargo, N.O.S.	(A)
415-C	Scrap Metal, direct from vessel to open car	(A)
	Exception No. 1 - When freight is received from Inland Waterway vessels for delivery to ocean-going vessels, the above charges will not be assessed against the Inland Waterway vessels.	
	INLAND WATERWAY - OUTBOUND	
430-B	Cargo, N.O.S.	(A)
	Exception No. 1 - When freight has been received from ocean-going vessels for delivery to Inland Waterway vessels, the above charges will not be assessed against the Inland Waterway vessels.	
	Exception No. 2 - The charges shown above will not apply on freight manufactured or processed at terminal buildings within the Outer Harbor Terminal area.	

(A) Increase

Adopted May 27, 1940 (Correction No. 368) Effective June 15, 19

446 (A)

BASIS FOR CHARGES:

Ocean-going vessels shall have dockage assessed based upon net registered tonnage. Other than ocean-going vessels and all watercraft engaged in inland waterway trade, except lighters, shall have dockage assessed based upon under-deck tonnage measurement.

447 #

WHEN DOCKAGE COMMENCES:

Dockage shall commence upon a vessel when making fast to a wharf, pier or seawall structure, or mooring to a vessel so berthed, or coming within a slip, channel, basin or canal, and shall continue until such vessel is completely freed from and has vacated the berth.

No deductions shall be made for Sundays, holidays, or on account of weather conditions.

450-A (1) (A)

CHARGES ON VESSELS ENGAGED IN COASTWISE OR OFFSHORE TRADE:

Half Dockage Rate:

When a service charge is assessed against a vessel upon cargo loaded or discharged, dockage shall be charged as follows:

Net Registered Tons				Rate for 24-hour Day
From	10	to 250	Inc.	$ 2.25
"	251	to 500	"	4.50
"	501	to 1,000	"	6.00
"	1,001	to 1,500	"	7.50
"	1,501	to 2,000	"	9.00
"	2,001	to 2,500	"	12.00
"	2,501	to 3,000	"	15.00
"	3,001	to 4,000	"	18.00
"	4,001	to 5,000	"	21.00
"	5,001	to 6,000	"	24.00
"	6,001	to 7,000	"	27.00
"	7,001	to 8,000	"	30.00
"	8,001	to 9,000	"	33.00
"	9,001	to 10,000	"	36.00

(1) Vessels of over 10,000 net registered tons shall be charged dockage in addition to the above charge of $36.00 at the rate of $3.00 per day for each additional 1,000 net registered tons or fraction thereof.

Item No. DOCKAGE (Continued)

450-A Cont'd:

(2) In computing dockage charges under this item, only sixths of days shall be considered and charged for, in the manner as follows, to-wit:

(a) Four hours or less shall be charged one-sixth of one day's dockage.
(b) Over four and not more than eight hours shall be charged two-sixths of one day's dockage.
(c) Over eight and not more than twelve hours shall be charged three-sixths of one day's dockage.
(d) Over twelve and not more than sixteen hours shall be charged four-sixths of one day's dockage.
(e) Over sixteen and not more than twenty hours shall be charged five-sixths of one day's dockage.
(f) Over twenty and not more than twenty-four hours shall be charged one day's dockage.

No charge for dockage under this item shall be less than two dollars ($2.00) in any case.

Exception No. 1:
Vessels other than lighters may be docked at such non-operative facilities in the harbor as may be designated by the Port Manager, at 50% of the rates named in this Item, provided such vessels are berthed for not less than 30 consecutive days.

452 # (R) CHARGES ON VESSELS ENGAGED IN INLAND WATERWAY TRADE:

Half Dockage Rate:

Vessels, other than lighters, engaged in inland waterway trade will be charged half dockage rate of 1 cent per ton per day of 24 hours or part thereof, for the first 200 net registered tonnage, or under-deck measurement of the vessels, as provided for in Item No. 446, and 3/8 cents for each additional ton when occupied as specified below:

(1) Vessels docking at a wharf discharging and/or loading cargo.
(2) Vessels docking at wharf and taking on stores, supplies, bunkering fuel, watering, fumigating, or undergoing repairs.
(3) Vessels while receiving or discharging ballast, or receiving stiffening.
(4) Vessels while lying outside of a vessel at a wharf (outside berth), discharging, loading or lying idle.

Item No. DOCKAGE (Continued)

455-B (R) CHARGES ON VESSELS ENGAGED IN COASTWISE TRADE:

Full Dockage Rate:

Full dockage rate is 2 cents per ton per day of twenty-four hours, or part thereof, for the first two hundred net registered tonnage, and 3/4 cent for each additional ton.

When no service charge is assessed against vessels engaged in coastwise trade, they will be charged full dockage, when occupied as specified below:

(1) When docking at wharf while discharging cargo.
(2) Docking at wharf while discharging or taking on passengers and baggage.
(3) With cargo on board, docking at wharf, while taking on stores, supplies or fuel for such vessel.
(4) With cargo on board, docking at wharf while lying idle.
(5) That are engaged in towing.
(6) That are not engaged in carrying freight or passengers.

\# 456 (R) CHARGES ON VESSELS ENGAGED IN COASTWISE OR OFFSHORE TRADES:

Half Dockage Rate:

Half dockage rate is 1 cent per ton per day of twenty-four hours, or part thereof, for the first two hundred net registered tonnage, and 3/8 cent for each additional ton.

(a) When no service charge is assessed against vessels engaged in Coastwise trade, they will be charged half dockage, when occupied as specified below:

(1) When docking at wharf while loading cargo.
(2) With no cargo on board, docking at wharf while receiving passengers or receiving stores, supplies or fuel for such vessel.
(3) With no cargo on board while lying idle at berth.
(4) While undergoing repairs at berth.
(5) When docking solely for bunkering fuel.
(6) While receiving or discharging ballast or receiving stiffening.

(b) When no service charge is assessed against vessels engaged in Offshore trade, they will be charged half dockage rate.

Item No.	DOCKAGE (Continued)
457	CHARGES ON VESSELS ENGAGED IN INLAND WATERWAY TRADE: Full Dockage Rate: Vessels, other than lighters, engaged in inland waterway trade will be charged full dockage rate of 2 cents per ton per day of twenty-four hours or part thereof, for the first 200 net registered tonnage, or under-deck tonnage measurement of vessels, as provided for in Item No. 446 and 3/4 cents for each additional ton when occupied as specified below: (1) Vessels docking at a wharf and discharging or taking on passengers and baggage. (2) Vessels docking at a wharf while lying idle. (3) Vessels that are engaged in towing. (4) Vessels engaged in carrying passengers only. (5) Vessels carrying neither freight nor passengers.
460-A	CHARGES ON LIGHTERS: (a) Lighter dockage rate is 1 cent per ton net tonnage per day of twenty-four hours or part thereof. (b) A lighter is understood to be a vessel which has neither power nor steering equipment; however, watercraft engaged exclusively in stevedoring, rigging or hoisting will be granted lighter rates. Exception: Lighters may be docked at such non-operative facilities in the harbor as may be designated by the Port Manager, at 50% of the rates named in this Item, provided such lighters are berthed for not less than 30 consecutive days.
470	OBSERVANCE MULTIPLE OF FIVE: When per diem dockage of a vessel is not a multiple of five it must be reduced or increased, as the case may be, to the nearest such multiple, provided, that if it be equally near to two such multiples, it must be increased to the first such multiple above.

Item No. DOCKAGE (Continued)

476-B **VESSELS SHIFTING, MOVING AND RETURNING DURING DOCKAGE PERIOD:**

(a) When a vessel of any kind is charged dockage at a wharf for a full day of 24 hours, she may use the same or any other wharf operated by the "Board" or under lease from the "Board" during that day without further charge, no matter how often she may leave and return, provided the master of the vessel obtains a transfer slip from the operator of the terminal at which the vessel first berths.

(b) When a vessel is shifted directly from one wharf to another wharf and dockage is charged for on a period of sixths of days, the total time at such berths will be considered together in computing the dockage charge.

477 **RATES WHEN A VESSEL CHANGES POSITION:**

When a vessel changes her status whereby she is entitled to a different dockage rate, the dockage rate in effect at the time the changed status takes place shall continue to be charged until the expiration of the time period during which such change takes effect and subsequent time shall be charged at the changed rate.

Tariff No. 1 — PORT OF OAKLAND — Fifth Revised Cancels Fourth Revised

TOLLS
RATES IN CENTS PER 2000 LBS. OR 40 CUBIC FEET AS PER VESSEL'S MANIFEST, UNLESS OTHERWISE SPECIFIED

Item No.	Commodity	Inland Waterway	Coastwise
485-B	All cargo, N.O.S., including vessel's stores and supplies, per ton	(R) 10	15
	400 lbs. or less	(R) 2	3
	800 lbs. or less, and more than 400 lbs.	(R) 4	6
	1,200 lbs. or less, and more than 800 lbs.	(R) 6	9
	1,600 lbs. or less, and more than 1,200 "	(R) 8	12
	Under 2,000 and more than 1,600 lbs.	(R) 10	15
	Note: The above subdivision applies when cargo is moving on either a weight or measurement basis		
490-B	Automobiles and Vehicles, viz: Commercial Cars, Chassis, Passenger Cars, Trucks, and Truck Trailers, each	25	25
495-D	Commodities in bulk, viz: Ballast, Ores, Chalk, Pyrites, Clay, Rock, Cliffstone, Salt, Gravel, Sand, Nitrates, Sulphur, Zinc Concentrates:		
	When handled direct between vessels or barges and cars, or trucks	(R) 10	15
	When deposited on terminal facility	(R) 10	15
	Ballast, Gravel, Rock and Sand, in bulk, When handled at non-operative facilities	5	5
505-A	Brick, viz: (Per 1,000)		
	(a) Brick, N.O.S.	20	20
	(b) Brick, fire, wt. 3 lbs. or over Per 1,000	25	25
	(c) Brick, fire wt. under 3 lbs. Per 1,000	18	18
515-B (E)	Containers, empty when returned to owner who previously paid tolls on same to this "Board" when they were shipped with commodities over the Municipal facilities	(R) Free	(R) Free
520	Fuel, bunker, when for use of vessel to which delivered, per 2,000 lbs.	5	5

Adopted March 25, 1940 — Effective March 25,
Correction No. 359 — (Except as noted

(E) Effective March 11, 1940

TOLLS (Continued)

RATES IN CENTS PER 2000 LBS. OR 40 CUBIC FEET AS PER VESSEL'S MANIFEST, UNLESS OTHERWISE SPECIFIED

Commodity	Coastwise & Inland Waterway	Offshore
Livestock, per head		
Cattle, Horses and Mules	15	25
Colts and Calves under a year old	7½	12½
Hogs	3	5
Sheep	3	5
Lumber and Lumber Products, viz:		
Laths, per 50 bundles	20	40
Hardwood Lumber, All kinds, per M.F.B.M.	30	50
Softwood Lumber, including dunnage and ship's lining, per M.F.B.M.	20	40
Piling & Poles, each	16	28
Lumber & Lumber Products, N.O.S. per M.F.B.M.	20	40
Petroleum and petroleum products (6.6 lbs. to gal. in absence of wt.) handled through pipe line	5	15
Oils, crude, fuel, gas, vegetable (7.4 lbs. to gal. in absence of wt.) handled through pipe line	5	15
Petroleum Products, in barrels, drums and cases	15	25
Water for vessels - Per 100 cu. ft.	5	5
Cargo which has been assembled at a terminal in Oakland or Alameda for outbound movement by vessel, and upon which a full toll based on the rate applicable to the trade in which the cargo is to move, has been assessed in accordance with the provisions of the tariff of such Oakland or Alameda terminal, and is then transferred to a municipal terminal for loading to vessel	(R) 10	(R) 10
Cargo discharged from a vessel at a municipal terminal and then transferred to another terminal in Oakland or Alameda to be delivered for account of the vessel, and upon which a full toll based on the rate applicable to the trade in which the cargo has moved, is to be assessed in accordance with the provisions of the tariff of the terminal to which the cargo is transferred	(R) 10	(R) 10

Addition (R) Reduction

Tariff No. 1 PORT OF OAKLAND Twenty-third Revised Page Cancels Twenty-second Revised Page

STORAGE

NOTE - RATES IN CENTS PER 2000 LBS. PER DAY INCLUDING SUNDAYS AND HOLIDAYS, UNLESS OTHERWISE SPECIFIED

Item No.	Commodity	
540-A-	All freight, N.O.S.	
541 -	Beans, dried (See Exception) Exception: When beans are held on wharf demurrage for period beyond which a total of $1.00 per ton of 2000 lbs. has been assessed within a season, no further charge will be made for that season. Under this provision "season" ends August 31st next.	
542 -	Box Shook	
543 -	Board, Wall, N.O.S. and Veneer, N.O.S.	
# 544 -	Fertilizers, viz: Ammonia Phosphate, Nitrates, Sulphate of Potash, Sulphate of Ammonia, Phosphates, Urea and other chemical or prepared fertilizers, Cyanamid, Potash	(A) (R)
* 545-J-	Apricot Kernels, Cotton, Dried Peas, Sugar, Canned Goods, in cases, Dried Fruit, Rice Compounds, viz: Cleaning, Scouring and Washing, in packages for outbound movement via vessel	
546 -	Excelsior, in bales	
547 -	Grain	
548 -	Hops, in bales	
549 -	Iron and Steel, when not stored in shed	
550-B-	Lath, per 60 bdls.	
555-C-	Lumber (Softwood), per M.F.B.M.	
# 556 -	Moss, Peat or Sphagnum	(A)
557 -	Motor Vehicles, on wheels	
* 560-A-	Nitrates Cancelled - See Item 544	
# 562 -	Oil Cake and Oil Cake Meal	
563 -	Paper and Paper Articles, viz: Bags; Boxes, fibre, K.D., folded: Envelopes; Tissue, N.O.S.; Wrapping Paper; Napkins; Towels	
565-A-	Pipe (Iron or Steel) when not stored in shed	
* 570-A-	Potash Cancelled - See Item 544	
571 -	Potatoes; Onions	

* Change # Addition (A) Increase (R) Reduction

Adopted June 27, 1938 Effective July 7, 19
(Correction No. 315)

STORAGE

RATES IN CENTS PER 2000 LBS. PER DAY INCLUDING SUNDAYS AND HOLIDAYS; UNLESS OTHERWISE SPECIFIED

No.	Commodity	Cents
	Sand	½
	Sand - Transferring to storage pile, per 2000 lbs.	30
	Seeds and Nuts for Oil pressing purposes	1
	Scrap Iron and Steel, when not stored in shed	.1
5-B	Shingles, per 40 bdls.	10
	Sisal, in bales	3
6-A	Soda Ash	1½
	Steel Sheets	1
	Tin Plate	1
6-A	Tomato Puree (Pulp) and Paste, packed 6/10s per case When Season Wharf Demurrage rate is requested by shipper at time of delivery of merchandise to the terminal, the rate for the season commencing on and after August 15th and ending March 1st next, is (A) 2½ cents per case, payable in advance.	
6-B	Wool, in bags	5
	Wool, in bales	3
7-A	STORAGE RATES ON BONDED MERCHANDISE Except as otherwise provided, the rates for bonded storage will be on basis of 50% greater than the rates shown in Items 540 to 586, inc. Exception - Rice from Mexico Any charge made by the Collector of Customs in connection with receiving and/or delivering goods from bonded section will be for account of the party for whom the service is performed.	1½

SPACE RENTAL APPLICABLE AT TERMINAL BUILDING "C" OUTER HARBOR TERMINAL

8	Rental of space without labor or other services, per month or fraction thereof	3¢ per sq.ft.
8.1	EXTRA CHARGE FOR HIGH PILING: When at the request of owner, goods which are unloaded from car or truck by the Board's employees are piled over 12 feet high in order to conserve space, a charge of five cents per ton will be assessed against the entire lot, in addition to the regular unloading charge named in this tariff.	
9	Transferring cargo from Terminal Bldg. "C" to wharves at Outer Harbor Terminal, or vice versa, when performed by the Board	60¢ per 2000 lbs

(A) Increase

Effective June 15, 1940

d May 27, 1940
rrection No. 369)

Tariff No. 1	PORT OF OAKLAND	Fifth Revised Page 3 Cancels Fourth Revised Page 3
Item No.	LOADING AND UNLOADING	

	RULES
590-A-	Rates apply only in connection with box or flat cars, except where otherwise noted. Rates will also apply to trucks when the loading or unloading is performed by the terminal.
595-A-	Except where specifically provided, the rates named herein are not applicable to commodities discharged from or loaded into gondola cars to or from dock. When such service is performed the basis of charge shall be cost plus 20 per cent, subject to minimum charge based on rates applicable to box or flat cars.
600-A-	Actual cost will be charged for all dunnage, stakes, bolsters, wire, etc., or bracing used in loading cars, also for paper used when it is necessary to line cars. Cost plus 20% will be charged for time of men employed in placing dunnage, bracing, lining, etc. These charges are in addition to charges named in individual items covering loading and unloading services.
602 -	Should it be necessary to use outside heavy lift equipment to load or unload cargo, the actual amount of the charge assessed against the Board for use of such equipment, plus necessary labor at actual cost plus 20%, will be billed by the Board, in lieu of the rates named in individual items for such services, to party for whom such service is performed, provided the amount of the charge on this basis exceeds the amount of the charge based on rates named in individual items.
605 -	The word "Direct" as used means a continuous operation, to or from car or ship, performed by Ship's stevedores.
610-A-	Rates named do not apply for loading mixed cars of ten or more commodities per car. Rate for loading such cars shall be (A) 95¢ per ton.

(A) Increase

Adopted January 20, 1936
(Correction No. 213)

Effective January 20, 193

Tenth Revised Page 29
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Ninth Revised Page 29

riff No. 1 — PORT OF OAKLAND — LOADING

APPLICABLE TO ALL TRAFFIC EXCEPT COASTWISE AND CANADIAN PACIFIC COAST PORTS
NOTE - RATES IN CENTS PER 2000 LBS. UNLESS OTHERWISE SPECIFIED

em No.	Commodity	Cents
611 -	AMMONIA, Sulphate of, in bulk, direct from vessel to open car	15
	AMMONIA, Sulphate of, in bulk, direct from vessel to box car	40
612-A-	ARSENIC	50
613 -	ALCOHOL, in bbls. or drums	50
614 -	ALUMINA, Sulphate of, in bags, barrels or drums	50
615-B-	ASBESTOS, N.O.S.	75
620-A-	ASBESTOS FIBRE AND WASTE, in pkgs.	50
625-B-	ASPHALT	50
630-B-	AUTOMOBILES, AUTO CHASSIS, OR BODIES Minimum rate $1.25 per 2000 lbs.	CP 20%
635-D-	AUTOMOBILE PARTS, Viz.:	
	Automobile Parts, N.O.S.; Chassis Springs	75
	Gas Tanks and Seat Springs	125
	Mufflers; Rims and Wheels	75
	Steel Frames, K.D.	125
	Steel Frames, S.U. Minimum rate $2.75 per 2000 lbs.	CP 20%
640 -	BANANAS, per bunch	1½
645-C-	BAGS OR BAGGING, including Burlap or Gunnies	55
647-3-	BARLEY, N.O.S., in sacks	50
	ROLLED BARLEY, in sacks	60
655-C-	BEANS; LENTILS; PEAS, in sacks	50
660-B-	BICYCLES, in crates	100
665-A-	BLOCKS (Wooden) for auto blocking, direct to open car	35
670-B-	BLOCKS (Wooden) for auto blocking, from dock, Minimum rate 85¢ per ton	CP 20%
673-B-	BONES, dry in bags	75
	BONES, green, in bags	100
	BONES, in bags, direct from vessel to open car	30
680-A-	BRICK, direct from vessel to flat or gondola car	40
	BRICK, direct from vessel to box car	52
	BRICK, dock to box cars, Minimum rate 95¢ per ton	CP 20%

• Change

Adopted May 22, 1939
(Correction No. 342)

Effective May 22, 1939

Tariff No. 1 — PORT OF OAKLAND — Twelfth Revised Page 1 Cancels Eleventh Revised Page 1

LOADING - (Continued)

APPLICABLE TO ALL TRAFFIC EXCEPT COASTWISE AND CANADIAN PACIFIC COAST PORTS

NOTE - RATES IN CENTS PER 2000 LBS. UNLESS OTHERWISE SPECIFIED

Item No.	Commodity	
692-A-	BRICK, in packages or on skids	
695-B-	BROODERS & INCUBATORS	
700-C-	CABLE, N.O.S. (a) On reels, except as shown in (b) and (c) (b) On reels, each weighing over 10,000 lbs., but not over 2 0,000 lbs. See Note 1 (c) On reels, each weighing over 20,000 lbs. See Note 2 Note 1 - Plus $1.00 per reel, for heavy lift. Note 2 - Plus $2.00 per reel, for heavy lift.	
705-B-	CABLE, direct from ship to open car: On reels, each weighing not over 4,000 lbs. On reels, each weighing over 4,000 lbs., Minimum rate 45¢ per ton	CP
710-B-	CANS, N.O.S., in cases or crates	
715-B-	CANS, Milk or Ice	
720-C-	CANNED GOODS, N.O.S.	
730-B-	CARBIDE	
735-B-	CARPETS AND RUGS, except Linoleum Rugs	
740-B-	CARS, Dump	
745-C-	CEMENT, ASBESTOS or MAGNESIUM CEMENT, Foreign CEMENT, N.O.S.	(A)
•750-B-	CHALK, in bulk, direct from vessel to open car CHALK, in bulk, direct from vessel to box car	
760-B-	CHARCOAL, N.O.S., in sacks CHARCOAL, Ground, in sacks	
765 -	CHEMICALS, N.O.S.	
775 -	CIGARS & CIGARETTES - See "tobacco"	
780-A-	CLAY, in bulk, direct from vessel to open car	
785-A-	CLAY, in bulk, direct from vessel to box car	
790-B-	CLAY, ground, in packages	

• Change — ‡Addition — (A) Increase

Adopted May 22, 1939 — Effective May 22, 1939

(Correction No. 343)

Tariff No. 1 — PORT OF OAKLAND — Seventh Revised Page 31 Cancels Sixth Revised Page 31

LOADING - (Continued)

APPLICABLE TO ALL TRAFFIC EXCEPT COASTWISE AND CANADIAN PACIFIC COAST PORTS
NOTE.- RATES IN CENTS PER 2000 LBS. UNLESS OTHERWISE SPECIFIED

Item No.	Commodity	Cents
795 B	CLOTHES PINS	100
800 B	COAL, in sacks	50
	COAL, in bulk, direct to open car	15
805 B	COFFEE, green, in bags	50
	COFFEE, roasted, in cans, boxed	60
810 A	COKE, direct to open car	15
	COKE, to closed car	75
820 B	CONDUIT PIPE, fibre	125
825 B	CONTAINERS, set up, Viz.:	
	Drums & Bbls., capacity 30 gallon or over	each 5
	Drums & Bbls., capacity less than 30 gallon	125
	Boxes, wooden, Minimum rate 95¢ per ton	CP 20%
830 C	COPRA, in sacks	50
•835 B	COPRA, in bulk to box car:	
	Hand shoveled	70
	Direct from vessel to car with pneumatic machinery	12½
840 B	CORK AND CORKBOARD	100
845 B	COTTON; COTTON LINTERS, in bales	55
850 B	CROCKERY or POTTERY	100
855	CYLINDERS	each 5
860	DRUMS, empty - See "Containers"	
862 C	EARTH, FULLERS, in sacks	55
	EARTH, FULLERS, in sacks, ex vessel direct to open car	35
	EARTH, FULLERS, in sacks, ex vessel direct to box car	50
865 C	ELECTRICAL GOODS:	
	Batteries	85
	Carbon Electrodes	55
	Electric Goods, N.O.S.	85
	Insulators, in straight carload lots	60
	Transformers, not over 1000#	60
	Transformers, over 1000#, Minimum rate 60¢ per ton	CP 20%
870 A	EARTHENWARE	100
875 C	ENAMELED WARE AND SHEET STEEL WARE	80
878 A	EXCELSIOR, in bales	100

•Change #Addition

Adopted February 20, 1939 (Correction No. 331) — Effective February 20, 1939

Tariff No. 1 — PORT OF OAKLAND — Tenth Revised Page Cancels Ninth Revised Page

LOADING - (Continued)

APPLICABLE TO ALL TRAFFIC EXCEPT COASTWISE AND CANADIAN PACIFIC COAST PORTS
NOTE - RATES IN CENTS PER 2000 LBS. UNLESS OTHERWISE SPECIFIED

Item No.	Commodity	
880	EXTRACTS, other than edible, in bbls. or drums	
890-C-	FELDSPAR OR FLUORSPAR, in bulk, ex vessel direct to open car FELDSPAR OR FLUORSPAR, in bulk, ex vessel direct to box car	
895-B-	FELDSPAR OR FLUORSPAR, in containers	
900-A-	FERTILIZER & FERTILIZER MATERIALS, in pkgs.	
905-B-	FIREWORKS - Foreign - Domestic	
910-B-	FLOUR, N. O. S. in bags FLOUR, Wood	
913-B-	FRUIT, dried	
915-C-	FURNITURE, Minimum rate 55¢ per ton FURNITURE, Rattan or Bamboo	CP
920-B-	GLASS AND GLASSWARE, VIZ.: Bottles, Jars & Jelly Glasses Glassware, N.O.S. Glass, window Glass, plate, Minimum rate $1.20 per ton	CP
925-B-	GLYCERINE, in drums	
935-C-	GREASE, N.O.S.	
938 -	GUMS, ORIENTAL: RESIN	
940-B-	HANDLES; Pick, Shovel, Axe, etc.	
945-B-	HARDWARE, N.O.S. HARDWARE, Builder's	
950-C-	HEMP; SISAL; FIBRE, N.O.S.	
955-C-	HIDES, Green, in bundles HIDES, N.O.S. or Skins, in bdls. HIDES, N.O.S. or Skins, loose, Minimum rate 75¢ per ton	CP
965-B-	HOUSEHOLD GOODS, Minimum rate 76¢ per ton	CP
970 -	IMPLEMENTS, Agricultural, Viz.: Hand, Set up or knocked down Other than hand, set up, Minimum rate $1.10 per ton Other than hand, knocked down	CP
#973 -	INSECTICIDES, N.O.S.	(R)
975-B-	INSTRUMENTS, Musical	

#Addition (R) Reduction

Adopted September 3, 1940 (Correction No. 373) — Effective September 9, 19

Eighth Revised Page 33
Cancels
Seventh Revised Page 33

iff No. 1 — PORT OF OAKLAND

LOADING - (Continued)

APPLICABLE TO ALL TRAFFIC EXCEPT COASTWISE AND CANADIAN PACIFIC COAST PORTS
NOTE - RATES IN CENTS PER 2000 LBS. UNLESS OTHERWISE SPECIFIED

n No.	Commodity	Cents
80-E	IRON AND STEEL ARTICLES, Viz.:	
	Iron and Steel, N.O.S.	60
	Bars, not greased	55
	Bars, greased, N.O.S.	75
	Bars, oiled or greased, boxed or completely burlapped	(R) 55
	Bolts and Nuts	55
	Castings, finished, weighing less than 2000 lbs. each	70
	Castings, finished, weighing 2000 lbs. and over, Min. rate 70¢ per ton	CP 20%
	Fittings, pipe, wrought iron, in containers	55
	Fittings, pipe, wrought iron, in bundles or loose	75
	Grinding balls, in bulk or sacks, direct to open car	15
	Hoop, N.O.S.	55
	Hoop, direct to box car	40
	Lath, metal	110
	Pig iron	55
	Pig iron, direct to gondola car	15
	Pipe, direct to open car	35
	Pipe, N.O.S.	80
	Plate, under 500 lbs. per piece, to box or flat car	60
	Plate, over 500 lbs. per piece, to box or flat car, Minimum rate 60¢ per ton	CP 20%
	Plate, direct to open car	35
	Rails, elevator	100
	Rails, elevator, direct to open car	35
	Rivets	55
	Rods, bent	85
	Shaftings	75
	Sheet, loose, or in packages	45
	Steel, direct to open cars	35
	Steel, large, over 500 lbs., Minimum rate 60¢ per ton	CP 20%
	Steel, structural, over 500 lbs. per piece, from dock Minimum rate 60¢ per ton	CP 20%
	Tubes, boiler	100
	Tubes, boiler, direct to open car	35
	Wire, N.O.S., in coils, barrels or cases	45
	Wire, direct to car	35
	Wire, barbed	60
	Wire, on reels, not over 4000 lbs. per package	55
	Wire or Wire Rope on reels, over 4000 lbs. per package, Minimum rate 60¢ per ton	CP 20%
	Wire, in rolls; Fencing; Reinforcement, etc.	85
86	CRIBBING STEEL	75

(R) Reduction

dopted September 3, 1940
(Correction No. 374)

Effective September 9, 1940

Tariff No. 1 — PORT OF OAKLAND — Ninth Revised Page 34 Cancels Eighth Revised Page 34

LOADING - (Continued)
APPLICABLE TO ALL TRAFFIC EXCEPT COASTWISE AND CANADIAN PACIFIC COAST PORTS
NOTE - RATES IN CENTS PER 2000 LBS. UNLESS OTHERWISE SPECIFIED

Item No.	Commodity	Cents
(1) 990-B-	JUNK ROPE	65
(1) 995-C-	KAPOK	50
(1) 1000-B-	LABELS	50
1002 -	LAMPS, incandescent, Minimum rate $1.25 per ton	CP 25
1006-B-	LANTERNS	85
1010-A-	LARD AND LARD SUBSTITUTES	50
1012-A-	LIME AND LIMESTONE, PHOSPHATIC, In packages	50
1015-C-	LINOLEUM; LINOLEUM RUGS; FELT BASE FLOOR COVERING AND OILCLOTH: In Crates In Rolls or Tubes	65 5
1016-	LITHARGE, in bbls. or drums	50
1017-B-	LITHOPONE, in packages	50
1020-B-	LUMBER Hardwood, Minimum rate $1.75 per ton Pine or Redwood, per 1000 ft. B.M. Timbers, N.O.S., Minimum rate $1.00 per 1000 ft. B.M. LUMBER, direct to open cars, per 1000 ft. B.M.	CP 25 .175 CP 25 55
1030-B-	MACHINERY, not over 2000 lbs. per package	110
1035-B-	MACHINERY, N.O.S., Minimum rate $1.10 per ton	CP 20
1040-A-	MACHINERY, not over 4000 lbs. per pkg., direct to open cars	35
1045-A-	MACHINERY, over 4000 lbs. per pkg., direct to open cars, Minimum rate 35¢ per ton	CP 20
1050-B-	MACHINES, Sewing	100
1055-B-	MACHINES, Washing	100
1057 -	MALT, in bags	50
1060-A-	MARBLE AND GRANITE, direct to open car When carloading is performed by heavy lift barge, and no additional charge is made by heavy lift barge for such service, carloading rate is twenty cents per ton for supervision, plus any expense for staking, wiring, etc.	12
1065-B-	MATCHES, in cartons and cases	75
1075-D-	MEAL, Viz.: Alfalfa, Bean, Bone, Ivory, Manioc, Oil Cake, Fish Meal	50 60

(1) Transferred from Seventh Revised Page 33

Adopted September 3, 1940
(Correction No. 375)

Effective September 9, 1940

Ninth Revised Page 35
Cancels
Tariff No. 1 PORT OF OAKLAND Eighth Revised Page 35
LOADING - (Continued)
APPLICABLE TO ALL TRAFFIC EXCEPT COASTWISE AND CANADIAN PACIFIC COAST PORTS
NOTE - RATES IN CENTS PER 2000 LBS. UNLESS OTHERWISE SPECIFIED

Item No.	Commodity	Cents
1080-B-	MERCHANDISE, N.O.S. (a) In straight lots, or in mixed lots of less than ten (10) commodities (b) In mixed lots of ten (10) or more commodities	 [illegible] [illegible]
1085-B-	MERCHANDISE EX ORIENT, N.O.S.	[illegible]
•1095-B-	NAILS, iron or steel	[illegible]
1096-A-	NAPKINS OR PADS, Sanitary	[illegible]
1097 -	NUTS, Viz: Non-edible, in bags Edible, shelled, in bags Edible, Unshelled, in bags Edible, shelled, in cases or bbls.	 [illegible] [illegible] [illegible] [illegible]
1098-B-	OCHRE, in sacks or bbls.	[illegible]
1100-B-	OIL, N.O.S., in cases, barrels or drums OIL & OIL PRODUCTS: petroleum, in cases, bbls. or drums	[illegible] [illegible]
1105-B-	OIL, palm, in casks weighing 1500 lbs. or over	[illegible]
1115-A-	ORE, in bulk, direct to open car	[illegible]
1116-B-	ORE, in sacks ORE, Manganese, direct to open car	[illegible] [illegible]
1120-B-	PAINTS & VARNISH	[illegible]
1125-F-	PAPER AND PAPER ARTICLES, Viz.: Bags Boxboard, Pulpboard or Strawboard, not corrugated Boxboard, Pulpboard or Strawboard, corrugated Boxes, K.D., or folded flat, in bdls. or crates Boxes, S.U. Building or Roofing, in rolls Dishes and Pie Plates Fillers, Flats and Partitions, K.D. flat Newsprint, in rolls Paper, N.O.S., in rolls Paper and Paper Articles, N.O.S. Scrap, in bales Tissue, Toilet or Towels Wall Paper	 [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]

•Change

Adopted February 20, 1939 Effective February 15, 1939
(Correction No. 333)

Seventh Revised Page
Cancels
Tariff No. 1 PORT OF OAKLAND Sixth Revised Page

LOADING (Continued)
APPLICABLE TO ALL TRAFFIC EXCEPT COASTWISE AND CANADIAN PACIFIC COAST POR
NOTE - RATES IN CENTS PER 2000 LBS. UNLESS OTHERWISE SPECIFIED

Item No.	Commodity	
1140-B-	PIANOS, Min. 95# per [redacted]	C
1145-A-	PITCH	
1150-B-	PLASTER	
1155-B-	PLUMBING GOODS: Viz.: Bathtubs Sanitary Merchandise	
1160-B-	POLES, Bamboo	
1163 -	POTASH, Muriated, in bulk, ex vessel, direct to open car POTASH, Muriated, in bulk, ex vessel, direct to box car	
1165-B-	POTASSIUM, Cyanide	
1170-B-	PULP, Wood PULPBOARD, in rolls weighing 750 lbs. or more	
1175-B-	PUMPS	
#1177	PYRETHRUM FLOWERS, in bales	(R
1180-B-	RADIATORS, Heating	
1185-B-	RAGS, N.O.S.	
1190-B-	RAGS (Oriental)	
1195-B-	REFRIGERATORS AND REFRIGERATOR MACHINE UNITS	
1205-A-	RICE, in sacks or mats	
1210-B-	ROPE	
1215-A-	ROSIN	
1220-B-	RUBBER, in bales or cases	
1225-A-	SAND, in bulk, ex vessel, direct to open car SAND, in bulk, dock to open car	

#Addition (R) Reduct

Adopted May 22, 1939 Effective May 2
(Correction No. 347)

Eighth Revised Page 37
Cancels
Seventh Revised Page 37

I No. I — PORT OF OAKLAND

LOADING - (Continued)

APPLICABLE TO ALL TRAFFIC EXCEPT COASTWISE AND CANADIAN PACIFIC COAST PORTS
NOTE - RATES IN CENTS PER 2000 LBS. UNLESS OTHERWISE SPECIFIED

No.	Commodity	Cents
30-B-	SCALES (Platform) and HAND TRUCKS	100
31-D-	SEED, N.O.S., in bags	(A) 50
	SEED, Beet, in bags	60
32-B-	SHELLS, Oyster, in sacks	45
35-B-	SHINGLES, Asbestos	55
40-B-	SHINGLES, Wooden	90
45-B-	SHOVELS	125
50-B-	SLATE, in crates	60
	SLATE, in bags	55
55-B-	SLATE, in bulk, Min. 95% per ton	CP 20%
70-B-	SOAP, in bars, chips, liquid or powdered, in bbls, boxes or cartons	60
75-A-	SOAP STOCK, N.O.S., in bbls. or drums	50
80-B-	SODA ASH, in sacks	55
	SODA ASH, in drums	50
85-C-	SODA, Bicarbonate of	55
	SODA, Caustic	50
86 -	SODA, Nitrate of, direct from vessel to car	40
87 -	SOLVENT, in bbls. or drums	50
88 -	SPICES, N.O.S., in bulk in bags or cases	55
90-B-	STAPLES	85
91 -	STERIC ACID or STERINE, in bags or bbls.	(R) 55
92 -	STONE, Cliff, in bulk direct from vessel to open car	15
	STONE, Cliff, in bulk, direct from vessel to box car	45
95-B-	STOVES	100
00-B-	STUCCO	50
05-B-	STUCCO PLASTER ROLLS	85

Addition (A) Increase (R) Reduction

Adopted May 22, 1939 — Effective May 22, 1939
(Correction No. 348)

Eleventh Revised Page
Cancels
Tariff No. 1 PORT OF OAKLAND Tenth Revised Page

LOADING - (Continued)

APPLICABLE TO ALL TRAFFIC EXCEPT COASTWISE AND CANADIAN PACIFIC COAST PORTS

NOTE - RATES IN CENTS PER 2000 LBS. UNLESS OTHERWISE SPECIFIED

Item No.	Commodity	Cents
1310-B-	SUGAR	80
1315-B-	SULPHUR, in sacks SULPHUR, direct to box car SULPHUR, in bulk, direct to open car	80 35 15
1323	SUPERPHOSPHATE: Direct to box car Direct to open car	80 15
1325-B-	TALLOW, or ANIMAL GREASE, in barrels TALLOW, Vegetable, in bales, to ordinary box car TALLOW, Vegetable, in bales, to refrigerator car	80 55 60
1330-B-	TANK MATERIAL, wooden, Minimum rate 95¢ per ton	CP 20
1332-A-	TAR, Coal, in barrels	50
1335-C-	TEA	115
1340-C-	TIN, Viz: Can Ends Foil Pig	50 50 50
1345-B-	TIN PLATE, N.O.S. TIN PLATE, Discharged from vessel direct to car	50 25
1355-B-	TIRES, rubber, solid	60
1360-B-	TIRES, Rubber, Pneumatic, loose, unwrapped	100
1365-B-	TIRES, Rubber, Pneumatic, wrapped or in bundles	80
•1367-B-	TITANIUM DIOXIDE, or TITANIUM PIGMENTS, in barrels or bags	50
1370-B-	TOBACCO, Manufactured, including cigars and cigarettes TOBACCO, in bales per bale	40 2
1385-B-	TOYS, Minimum rate 75¢ per ton	CP 20
1390-	TRACTORS, direct to open car	40
1395-B-	TRACTORS, Minimum rate 75¢ per ton	CP 20
1397-	TRISODIUM PHOSPHATE, in bags	60
1402-B-	TURPENTINE, in drums	80

• Change

Adopted November 7, 1938 Effective November 21, 19
(Correction No. 318)

Sixth Revised Page 39
Cancels
Fifth Revised Page 39

Tariff No. 1 — PORT OF OAKLAND

LOADING - (Continued)

APPLICABLE TO ALL TRAFFIC EXCEPT COASTWISE AND CANADIAN PACIFIC COAST PORTS

NOTE - RATES IN CENTS PER 2000 LBS. UNLESS OTHERWISE SPECIFIED

Item No.	Commodity	Cents
1405-B-	VASELINE	50
1416 -	WALL BOARD, in packages, weighing over 500 lbs. or over 6 ft. in length, Min. 60¢ per ton	CP 20%
	WALL BOARD, in packages, weighing not over 500 lbs. nor over 6 ft. in length	60
	WALL BOARD, cane fibre	35
1420-B-	WALNUT-MEATS, in boxes	75
1425-B-	WASTE, Cotton	60
1430-B-	WAX, in cartons	60
	WAX, in bags or barrels	55
1435-B-	WHEAT, in sacks	50
1440-B-	WHEELBARROWS	125
1444 -	WHITING, in bags or barrels	(R) 55
1445-B-	WHEELS, car	50
1446 -	WINE, in cases	60
	WINE, in bbls.	50
1447-B-	WINE STONE (Argols), or Wine Lees, in sacks	50
1448 -	WOOL, including tagging	70
1449-B-	ZINC OXIDE, in packages	50

(A) Addition — (R) Reduction

Adopted May 22, 1939
(Correction No. 349)

Effective May 22, 1939

1170

Tariff No. 1 — PORT OF OAKLAND — Eighth Revised Page 40 Cancels Seventh Revised Page 40

UNLOADING
APPLICABLE TO ALL TRAFFIC
NOTE - RATES IN CENTS PER 2000 LBS. UNLESS OTHERWISE SPECIFIED

Item No.	Commodity	Cents
1450-B-	ALFALFA MEAL, N.O.S.	50
	ALFALFA MEAL, direct from car to ship	30
1454 -	AMMONIA, in cylinders	50
	AMMONIA, Sulphate of	40
1460-B-	ASPHALT, in bags, bbls. or drums	50
1465-D-	AUTOMOBILES, including Auto Bodies and Chassis, Minimum rate $1.05 per ton	CF 20¢
	AUTOMOBILES, boxed, direct to ship	40
	AUTOMOBILE PARTS, in boxes or crates	60
1468-A-	BARIUM PEROXIDE	50
• 1470-D-	BARLEY, rolled, in sacks	(R) 50
	BARLEY, N.O.S.: Oats, in sacks	50
	BARLEY, direct from car to ship	20
1475-B-	BARYTES	40
1480-A-	BEANS: LENTILS: PEAS, in bags	45
1484 -	BEER, in bottles or cans	60
1487 -	BEET PULP, in sacks	40
	BEET PULP, direct from car to ship	30
1490-A-	BONE BLACK AND BONE CHARCOAL	50
1495-B-	BRICK, fire, in casks or crates	45
1500-B-	BROODERS AND INCUBATORS	125
1503-A-	CAKE OR MEAL, Oil, N.O.S.	50
	CAKE OR MEAL, Oil, direct from car to ship	20
1505-A-	CANNED GOODS, N.O.S.	50
1510 -	CASEIN	40
1520-B-	CEMENT, N.O.S.	50
1525-B-	CEMENT, Asbestos	80
1530-A-	CHEMICALS, N.O.S.	60
1531 -	CLEANING AND WASHING COMPOUND	35

• Change (R) REDUCTION

Adopted December 13, 1937 Effective December 27, 1937

(Correction No. 304)

UNLOADING - (Continued)
APPLICABLE TO ALL TRAFFIC
NOTE - RATES IN CENTS PER 2000 LBS. UNLESS OTHERWISE SPECIFIED

Item No.	Commodity	Cents
1535-	CONTAINERS, empty, S.U., Viz.: Barrels and Drums	Each 5
1537-A-	COPPER, in slabs, pigs or mats COPPER, in slabs, pigs or mats, direct from car to ship with ship's tackle	35 10
*1547-B-	*COPRA, in bulk, direct from box car to vessel with pneumatic machinery COPRA, in sacks	(R) 12½ 50
1550-B-	COTTON OR COTTON LINTERS	40
1555-A-	CULVERTS, direct from open car	40
1560-B-	CULVERTS, Minimum rate 50¢ per ton	CP 20%
1563-	EARTH, Infusorial	50
1565-A-	ENAMELWARE, Household	75
1570-B-	FERTILIZER AND FERTILIZER MATERIAL	50
1575-B-	FISH MEAL, N.O.S. FISH MEAL, direct from car to ship	50 20
1577-C-	FLOUR, in single bags, N.O.S. weighing each over 24 lbs. FLOUR, in double bags or bales FLOUR, in single jute bags; cans crated or cases	55 40 50
1580-A-	FRAMES, Window, Wooden or Metal, Minimum rate $1.05 per ton	CP 20%
1585-A-	FRUIT, dried; In cases In sacks	50 45
1590-B-	FRUIT, fresh	60
1595-B-	GLASSWARE, Viz.: Bottles, Jars	65
1598-	GLUESTOCK, in bales	50
1597-	GLYCERINE	50
1600-C-	HAY	65
1605-C-	HIDES, Green, Salted, in bdls. HIDES, dry, Minimum rate 60¢ per ton	75 CP 20%
1609-A-	HONEY, in tins, in cases	50
1610-B-	HOPS	50
1615-A-	INSECTICIDES, N.O.S.	50

* Change # Addition (R) Reduction

Adopted March 11, 1940
(Correction No. 358)

Effective March 11, 1940

Eleventh Revised Page 42
Cancels
Tariff No. 1 PORT OF OAKLAND Tenth Revised Page 42

UNLOADING - (Continued)
APPLICABLE TO ALL TRAFFIC
NOTE - RATES IN CENTS PER 2000 LBS. UNLESS OTHERWISE SPECIFIED

Item No.		Cents
1617-B	IRON OR STEEL, N.O.S.	45
	PIG IRON	35
	IRON OR STEEL, N.O.S., ex gondola car direct to ship	35
1620-D	JUNK, VIZ:	
	Brass; Rags; Rope; Rubber in bales	50
	Metal Dross, Viz: Lead, solder or zinc	50
	Tires, Rubber - Minimum rate 50¢ per ton	CF 2%
	Direct from open car to ship;	
	Glass, broken, in bags	20
	Scrap car wheels, car axles, railroad rails, not mixed, direct from open car with ship's tackle	30
	Scrap, Iron and Steel, direct from open car with ship's tackle	40
1625-A	KERNELS (Apricot)	60
*1626-A	LEAD, Viz: Bar, Pig or Slabs, including Lead in sacks, N.O.S.	35
	Antimonial Lead, in sacks	(A) 40
1627-A	LARD AND LARD SUBSTITUTES, in packages	50
1628	LIME	50
1629	LINOLEUM, LINOLEUM RUGS: FELT BASE FLOOR COVERING & OILCLOTH:	
	In Crates	65
	In Rolls or Tubes	75
1630-B	LITHOPONE, in packages	45
1635-E	LUMBER AND LUMBER PRODUCTS, VIZ:	
	Doors	100
	Lumber, N.O.S., per 1000 ft. B.M.	125
	Redwood Lumber, per 1000 ft. B.M.	(A) 175
	Lumber, direct from open car	40
	Pickets, Pine, from box car or open car	100
	Shooks; Ties, Railroad	75
	Timbers, from open car, Min. rate $1.00 per 1000 ft.	CF 2%
	Timbers, from box car, Min. rate $1.45 per 1000 ft.	CF 2%
1640-B	MACHINERY, Minimum rate 50¢ per ton	CF 2%
1645-B	MAGNESITE, in packages	45
1650-B	MAGAZINES (old), in packages	45
#1653	MAGNESIUM CARBONATE	(A) 50
1655-A	MERCHANDISE, N.O.S.	75
1660-A	MILK, in bbls. or sacks	50
1663-A	NAPKINS OR PADS, Sanitary	100
1665-B	NEWSPAPERS (old), in packages	45

* Change # Addition (A) Increase

Adopted July 22, 1940 Effective July 23, 1940
(Correction No. 372)

Tariff No. 1 — PORT of OAKLAND — Ninth Revised Page 43 Cancels Eighth Revised Page 43

UNLOADING - (Continued)
APPLICABLE TO ALL TRAFFIC
RATES IN CENTS PER 2000 LBS. UNLESS OTHERWISE SPECIFIED

Item No.	Commodity	Cents
1667-A-	NUTS, Viz.:	
	Edible, shelled, in bags	50
	Edible, unshelled, in bags	60
	Edible, unshelled, in bbls. or cases	75
	Non-Edible, in bags	50
1670-A-	OIL, in cases, bbls. or drums	50
1675-A-	OIL PRODUCTS, Viz.: Petroleum, in cases, bbls. or drums	50
1678-A-	ONIONS, in packages	50
1680-C-	ORE, in sacks	40
	ORE CONCENTRATES, in drums	50
1685-B-	PAINT, VARNISH AND DRYERS	50
1690-D-	PAPER AND PAPER ARTICLES, VIZ.:	
	Fibreboard cartons, K.D., and parts thereof	45
	Pulpboard and Strawboard	45
	Roofing Paper, in rolls	50
	Paper, N.O.S.	50
	Tissue, Toilet and Towels	75
1692 -	PEAS, dried, in sacks	45
1695-B-	PENCIL SLATS	60
1700-B-	PLUMBERS' MATERIAL	80
1705-A-	POTASH	50
1708-A-	POTATOES, in packages	50
1710-B-	RADIATORS, scrap	140
1715-B-	REELS, empty	75
1717 -	REFRIGERATORS	100
1720-B-	RICE, in Mats	60
	RICE, in Sacks	45
1725-A-	RICE HULLS	60
1727-B-	SALT, in bags, or cases	40
1730-B-	SALT CAKE, in sacks	45
1735-B-	SCRAP RECORD MATERIAL, phonograph	40
1740-B-	SEEDS, N.O.S.	40
1743 -	SHELLS, (fruit pit) crushed or ground, in bags	(R) 50
1745-B-	SOAP	50

Addition (R) Reduction

* Adopted May 27, 1940 (Correction No. 370) — Effective June 15, 1940

Tariff No. 1 — PORT OF OAKLAND — Fifth Revised Page
Cancels Fourth Revised Page

UNLOADING - (Continued)
APPLICABLE TO ALL TRAFFIC
NOTE - RATES IN CENTS PER 2000 LBS. UNLESS OTHERWISE SPECIFIED

Item No.	Commodity	Cents
1746-A-	SODA, Caustic and Bicarbonate of	50
1748-B-	SODA, Silicate of, in drums or sacks	50
1749-B-	SODIUM SULPHITE, in drums	50
1750-B-	STAVES (bbl.)	100
1755-B-	SUGAR SUGAR, direct from car to vessel	40 20
1760-B-	TALLOW	50
1765-B-	TANK MATERIAL, wooden, Minimum rate $1.00 per ton	CP 20%
1775-B-	TIN PLATE	40
1780-B-	TIRES, Automobile, Minimum rate 75¢ per ton	CP 20%
1785-A-	TRACTORS, Minimum rate 50¢ per ton TRACTOR PARTS, in boxes, weighing not over 1000 lbs.	CP 20% 60
1790-A-	TRACTORS, HARVESTORS AND ROAD GRADERS not over 4000 lbs. per pkg., direct from open car	40
(L)1793-	VALVES, loose, in packages, or on skids weighing each not to exceed 3,000 lbs.	(L)60
(L)1794-	VEGETABLES, fresh, in crates, Min. rate 3¢ per crate	CP 20%
1795-B-	TRANSFORMERS, electric, each weighing over 1000 lbs. Minimum rate 75¢ per ton	CP 20%
1796-	WALL BOARD, in packages, over 500 lbs. weight or 6 ft. in length, Minimum rate 60¢ per ton WALL BOARD, in packages, not over 500 lbs. weight or 6 ft. in length	CP 20% 60
1797-B-	WHEAT	50
1800-A-	WINE, in cases WINE, in bbls.	60 30
1805-B-	WIRE NETTING, in rolls	75
1810-B-	WOOL, sacked	45
1815-B-	WOOL, baled	40
1817 -	ZINC, Viz.: Dust; Oxide; Sulphate of	50

(A) Addition (L) Increase

Adopted February 20, 1939 — Effective February 20, 1939

(Correction No. 336)

(Fifth Revised Page 45
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Tariff No. 1 PORT OF OAKLAND Fourth Revised Page 45

LOADING

APPLICABLE TO COASTWISE AND CANADIAN PACIFIC COAST PORTS TRAFFIC
NOTE - RATES IN CENTS PER 2000 LBS. UNLESS OTHERWISE SPECIFIED

Item No.	Commodity	Cents
1820-	ALL FREIGHT, N.O.S.	52
1825-A-	ASPHALTUM	52
1830-	BARRELS, empty	each 5
1835-A	BEANS, dried	45
1840-	BOX BOARD	45
1845-A-	BOX SHOOKS AND CRATE MATERIAL (Under 8 ft. in length)	50
1850-	CANNED GOODS	45
1855-	CAR WHEELS	40
1860-A-	CELITE OR INFUSORIAL EARTH	52
1865-A-	CEMENT, building	40
1870-A-	CEREAL FOOD PREPARATIONS (for human consumption)	45
1875-A-	CREOSOTE OIL	52
1880-A-	CROSS ARMS AND CROSS ARM BRACES: Untreated: To box car Direct from vessel to open car Treated: To box car Direct from vessel to open car	 145 80 165 100
1885-	DRUMS, empty	each 5
1890-A-	FEED, ANIMAL OR POULTRY	45
1895-B-	FERTILIZER, N.O.S.	40
1900-A-	FLOUR, grain	30
1905-	FURNITURE	CP 20%
1910-A-	GRAIN, N.O.S., in sacks	30
1915-	GREASE	45
#1917-	HAMPERS, Pea	(A)100
1920-	HOUSEHOLD GOODS	CP 20%
1925-A-	IRON AND STEEL ARTICLES, Viz.: Band, Bar, Pipe, Plate, Rod, Strip and Structural	CP 20%

#Addition (A) Increase

Adopted February 20, 1939 Effective February 20, 1939

Correction No. 337

Tariff No. 1 — PORT OF OAKLAND — Ninth Revised Page 46 Cancels Eighth Revised Page 46

LOADING - (Continued)

APPLICABLE TO COASTWISE AND CANADIAN PACIFIC COAST PORTS TRAFFIC.
NOTE - RATES IN CENTS PER 2000 LBS. UNLESS OTHERWISE SPECIFIED

Item No.	Commodity	Cents
1930-A-	LATH - To closed car per 1000 LATH - Direct from vessel to open car per 1000	45 10½
1935-A-	LIME, Common (Hydrated or Slack)	40
1940-A-	LUMBER - Dock to box car: Untreated, per M.F.B.M. Treated, per M.F.B.M.	140 165
1941-A-	LUMBER - Direct from vessel to open car: Untreated, per M.F.B.M. Treated, per M.F.B.M.	80 100
1945-	MACHINERY	CP 20%
1950-	MAGNESIUM	45
1955-	MALT	45
1960-	MARBLE SLABS	CP 20%
1965-	MATCHES	50
•1970-A-	MEAL, viz: Bean, Oil cake Fish	45 62½
1980-B-	OIL, viz.: Sea Animal or Vegetable	45
1983-	OIL, in bulk, direct from vessel through pipe line to tank car at loading rack - - - - - - - - - - - Per Car	500
1985-	ONIONS, dried	45
1990-	ORE, in sacks	45
1995-	PAINTS	45
•2000-C-	PAPER AND PAPER PRODUCTS, viz.: Bristolboard, Bexboard, Pulpboard or Strawboard Boxes, K.D.F. Box Fillers, Liners and/or Partitions (including egg case fillers) Egg Carriers; Pails, nested Napkins, Tissue, Toilet, Towels	(R) 45 45 75 45 60
2005-	PETROLEUM AND PETROLEUM PRODUCTS	45

• Change (R) Reduction

Adopted November 7, 1938
(Correction No. 320)

Effective November 21, 1938

Tariff No. 1 — PORT OF OAKLAND — Fifth Revised Page 47 Cancels Fourth Revised Page 47

LOADING - (Continued)
APPLICABLE TO COASTWISE AND CANADIAN PACIFIC COAST PORTS TRAFFIC
NOTE - RATES IN CENTS PER 2000 LBS. UNLESS OTHERWISE SPECIFIED

Item No.	Commodity		Cents
2005 -	POTATOES		45
2010 -	PEAS		45
2015-A-	PIG LEAD		40
2020-A-	PLASTER, in packages		52
2025-A-	PULP, Wood		45
2030-B-	RAGS		52
2033 -	RUBBER, scrap, in bales		52
2035 -	SASH WEIGHTS		45
2040 -	SCOURING COMPOUND, in cases		45
2045 -	SHAKES		45
2050-A-	SHINGLES, wood	per 1000	5½
2053 -	SODA, Caustic, in packages		(R) 45
2055 -	STAVES and HEADINGS		50
2060 -	STUCCO		52
2065 -	TALLOW		45
2070 -	TIN PLATE		40
2073 -	WALL BOARD		45
2075-A-	WHEAT, in sacks		30

#Addition (R) Reduction

Adopted May 18, 1936
Correction No. 227)

Effective May 18, 1936

LOADING AND UNLOADING
APPLICABLE TO HAWAIIAN TRAFFIC

Item No.	
* 2084 -	CANCEL. See items 1417 or 1796 series.
* 2085 -	CANCEL. See items 1080 or 1655 series.
* 2086 -	CANCEL. See items 630 or 1465 series.
* 2087 -	CANCEL. See items 690 or 1655 series.
* 2088 -	CANCEL. See items 1020 or 1635 series.
* 2089 -	CANCEL. See item 720 series.

* Change

Adopted December 28, 1936 Effective January 1, 1937

(Correction No. 248)

WEIGHING

NOTE - WHEN WEIGHING IS PERFORMED IN CONJUNCTION WITH LOADING OR UNLOADING UNLESS OTHERWISE SPECIFIED, 50% OF THE RATES NAMED HEREIN WILL APPLY. WHEN A COMMODITY IS NOT SPECIFICALLY NAMED, IT WILL BE RATED BY ANALOGY.

Item No.	Commodity	Rates in Cents Per 2000 lbs.	Per Package
2095	Almonds, Shelled	50	
2100 A	Allspice, in bags	60	
2105 A	Alum, in barrels or cases	60	
2110 A	Aluminum, in packages	70	
2115 A	Aluminum (Pig)	100	
2120	Ampas	50	
2125 A	Antimony	60	
2130	Argols	75	
2135 A	Beans, in bags, N.O.S.	40	
	Beans, in bags, weighing each individual bag	1.00 (A)	
	Beans, in bags, repacking to uniform weight	2.00 (A)	
2140 A	Bone Meal	50	
2145	Bones, in sacks	75	
2150	Bran	50	
2155	Buckwheat	50	
2160 A	Camphor, in cases	85	
2165 A	Cassia, in bales or cases, collectively		6 each
	Cassia, in cases, individually		10 "
2180	Caustic Soda, in 700 lb. Drums		25 "
2185	Chestnuts	55	
2190	Chillies, in bags	100	
2195 A	Cloves	60	
2200	Coal, - Shipside Weighing	20	
2205	Cocoa Beans	50	
2210 A	Cocoanut, Dessicated, in cases, collectively		6 case
	Cocoanut, Dessicated, in cases, individually		10 "
2220 A	Coffee, N.O.S. (See Note, Item 2225)		
	In sacks, each weighing 105 lbs. or less		3½ sack
	In sacks, each weighing over 105 lbs. but not to exceed 165 lbs.		5 "
	In sacks, each weighing over 165 lbs. but not to exceed 200 lbs.		6 "
	In bales		6 bale

* Change (A) Increase

Adopted April 29, 1940 (Correction No. 360) Effective May 18, 1940

Tariff No. 1 PORT OF OAKLAND Second Revised Page 5 Cancels First Revised Page 5

WEIGHING - (Continued)

NOTE - WHEN WEIGHING IS PERFORMED IN CONJUNCTION WITH LOADING OR UNLOADING, UNLESS OTHERWISE SPECIFIED, 50% OF THE RATES NAMED HEREIN WILL APPLY. WHEN A COMMODITY IS NOT SPECIFICALLY NAMED, IT WILL BE RATED BY ANALOGY.

Item No.	Commodity	Rates in Cents Per 2000 lbs.	Per Package
2225	Coffee (Santos) In sacks each weighing 101 lbs. and up to but not exceeding 134 lbs..... Note: When Coffee, N.O.S. and Coffee (Santos) is segregated and weighed according to four or more submarks, an additional charge of 2 cents per sack or per bale will be assessed.		4 sa
2230	Copper, Pig	75	
*2235 A	Copra, in sacks	50	
	Copra, in bulk, weighed on public truck scale at the Outer Harbor Terminal.....	(R) 5	
2245 A	Cotton, Cotton Linters or Raw Waste, in bales Weighing under 301 lbs. per bale ..... Weighing 301 and not over 400 lbs. each ..... Weighing over 400 lbs. each		10 bal 12½ 25
2250 A	Currants, in barrels: 350 lbs. or less, individually		12½ b
2255 A	Dates, in cases: Each Case weighing 42 lbs. or less Each case weighing 80 lbs. or less Each case weighing over 80 lbs. but not exceeding 150 lbs.....		3 ca 3 5
2270	Feathers, in bales		15 bal
2275 A	Fertilizer, N.O.S.	50	
	Fish Stock in bales	70	
2280	Fruit, dried	50	
	When not re-piled	40	
2290 A	Garlic, in crates		5 pa
2295 A	Ginger	60	
2297 B	Grain	30	
	When performed in conjunction with carloading or unloading - weighing included in loading or unloading charge.		

* Change (R) Reduction

Adopted December 19, 1938 Effective December 19, 1938

2473 (Correction No. 325)

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and
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Tariff No. 1 — PORT OF OAKLAND

WEIGHING - (Continued)

NOTE - WHEN WEIGHING IS PERFORMED IN CONJUNCTION WITH LOADING OR UNLOADING, UNLESS OTHERWISE SPECIFIED, 50% OF THE RATES NAMED HEREIN WILL APPLY.
WHEN A COMMODITY IS NOT SPECIFICALLY NAMED, IT WILL BE RATED BY ANALOGY.

Item No.	Commodity	Rates in Cents Per 2000 lbs.	Per Package
2300 -	Graphite, in barrels:		
	Each weighing 450 lbs. or less		15 bbl.
	Each weighing over 450 lbs.		20 "
2305 A -	Gums (crude) in bags	(A) 60	
	Gums (crude) in baskets	(A) 80	
	Gums, in cases:		
	Each weighing 112 lbs., net, individually		(A) 10 case
	Gums, in cases:		
	Each weighing 220 lbs., net individually		15 case
2320 A -	Gutta Jelltong	(A) 70	
2330 A -	Hair, in bales:		
	Each weighing under 500 lbs.		(A) 20 bale
	Each weighing over 500 lbs.		(A) 30 bale
2332 B -	Hay, Weighing and Tagging	(A) 50	
2335 A -	Hemp, Manila, in bales, individually		(A) 8 bale
2340 -	Hemp, New Zealand, in bales, individually	75	
2345 -	Hemp, Tientsin, in bales, individually		15 "
2350 A -	Herbs, N.O.S.	(A) 85	
2355 -	Hides, dry, loose	125	
2360 -	Hides, dry, in bales	100	
2365 A -	Hides and Pelts, Wet, Salted:		
	Loose	(A) 125	
	In barrels or casks	(A) 85	
	In bundles	(A) 100	
2370 A -	Honey:		
	In cases		(A) 5 case
	In barrels		(A) 17½ bbl.
2375 A -	Hops		(A) 15 bale
2380 -	Horns, cattle, in nests	100	
2385 -	Jute, in bales		12½ "

(A) Increase

Adopted August 23, 1937 — Effective Sept. 7, 1937.

(Correction No. 286)

WEIGHING - (Continued)

NOTE - WHEN WEIGHING IS PERFORMED IN CONJUNCTION WITH LOADING OR UNLOADING, UNLESS OTHERWISE SPECIFIED, 50% OF THE RATES NAMED HEREIN WILL APPLY. WHEN A COMMODITY IS NOT SPECIFICALLY NAMED, IT WILL BE RATED BY ANALOGY.

Item No.	Commodity	Rates in Cents Per 2000 lbs.	Per Package
2335 -	Hemp, Manila, in bales, individually		7 bale
2340 -	Hemp, New Zealand, in bales, individually	75	
2345 -	Hemp, Tientsin, in bales, individually		15 "
2350 -	Herbs, N.O.S.	75	
2355 -	Hides, dry, loose	125	
2360 -	Hides, dry, in bales	100	
2365 -	Hides and Polts, Wet, Salted:		
	Loose	75	
	In barrels or casks	55	
	In bundles	75	
2370 -	Honey:		
	In cases		5 case
	In barrels		15 bbl.
2375 -	Hops		12½ bale
2380 -	Horns, cattle, in nests	100	
2385 -	Jute, in bales		12½ "

WEIGHING - (Continued)

NOTE - WHEN WEIGHING IS PERFORMED IN CONJUNCTION WITH LOADING OR UNLOADING, UNLESS OTHERWISE SPECIFIED, 50% OF THE RATES NAMED HEREIN WILL APPLY. WHEN A COMMODITY IS NOT SPECIFICALLY NAMED, IT WILL BE RATED BY ANALOGY.

Item No.	Commodity	Rates in Cents Per 2000 lbs.	Per Package
2390 A -	Kapok: Single bales in drafts		5 bale
	Single bales individually		6½ "
	Double " "		10 "
	Triple " "		12½ "
2395 A -	Lead (Pig)	60	
2400 A -	Leather: Rolls each weighing 225 lbs. or loss, individually		10 roll
2410 -	Linseed	50	
2415 -	Mace: Draft Weights:-		
	In cases each weighing not to exceed 75 lbs.		5 case
	In cases each weighing over 75 lbs.		7½ "
	Individual Case Weights:-		
	Case each weighing not to exceed 75 lbs...		8 "
	Case each weighing over 75 lbs.....		12 "
2420 -	Mustard Seed	50	
2425 -	Nutmegs: Draft Weights:-		
	In cases each weighing not to exceed 75 lbs.		5 "
	In cases each weighing over 75 lbs.....		7½ "
	Individual Case Weights:		
•	In cases each weighing not to exceed 75 lbs.		8 "
	In cases each weighing over 75 lbs.....		12 "
2445 -	Nitrates:		
	On dock or barge	50	
	In ship slings	20	
2450 A -	Nuts: Viz: Babassu or Ivory;		
	In sacks	50	
	In bulk, weighed on public truck scale at the Outer Harbor Terminal.....	(R) 5	
2455 A -	Oil:		
	In cases		5 "
	In 55 gallon barrels or drums, individually...		12½ each
	In 110 " " " " " ...		25 "
	In Hogsheads, individually		35 "
2460 -	Oil Cake	50	
2465 A -	Onions, in crates		5 crate

• Change (R) Reduction

Adopted January 23, 1939 Effective January 23, 1939
(Correction No. 329)

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WEIGHING - (Continued)

NOTE - WHEN WEIGHING IS PERFORMED IN CONJUNCTION WITH LOADING OR UNLOADING [illegible] UNLESS OTHERWISE SPECIFIED, 50% OF THE RATES NAMED HEREIN WILL APPLY. WHEN A COMMODITY IS NOT SPECIFICALLY NAMED, IT WILL BE RATED BY ANALOGY

Item No.	Commodity	Rates Per 2000 lbs.	Rates Per [illegible]
2470	Ores, in sacks	50	
2475	Ores, in sacks - Check weighing	25	
2480	Paper:		
	Small Rolls	100	
	Jumbo Rolls, individually		40 [illegible]
	Bales or Bundles	75	
2485 A	Peas; and Lentils, dried	50	
2490 A	Peanuts, shelled	50	
	In Shell	60	
2495	Pebbles, in bags	50	
2500 A	Pepper	60	
2505 A	Pimientos, in bags	60	
2510 A	Potash, in bags	60	
2515	Quebracho	60	
2520	Rags, in bales, individually	55	
2525	Rattan	150	
2530	Rattan, bent	100	
2535	Rattan, core	100	
2540 A	Resin and Rosin, in bbls		12½ [illegible]
	Resin and Rosin, in Cases	60	
2545 A	Rice	50	
2550 A	Rubber, in cases or bales	(A) 100	
	Rubber, check weighing	50	
2560	Sago	60	
2565	Seed, Rape and Canary	50	
2570 A	Seed, Sunflower	50	
2580	Shellac, in cases, bales, or sacks, individually		8 pkg
2585 A	Shellac, in cases, bales, or sacks, in drafts	70	
2590	Shells, Pearl	100	
2595 A	Shrimps	70	
2600 A	Sisal, in bales		10 bal
•2605 A	Soap Stock, - See item 2455 A	Oil Rates—	—Apply
2610 A	Soda Ash	60	
•2615 A	Stearine .....See item 2455 A	Oil Rates—	—apply
2620 A	Strawboard, in cases		12½ co
2625 A	Sugar	50	

•Change (A) Increase

Adopted February 20, 1939
Correction No. 338

Effective February 20, 1939

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Tariff No. 1 — PORT OF OAKLAND

WEIGHING - (Continued)

NOTE - WHEN WEIGHING IS PERFORMED IN CONJUNCTION WITH LOADING OR UNLOADING, UNLESS OTHERWISE SPECIFIED, 50% OF THE RATES NAMED HEREIN WILL APPLY. WHEN A COMMODITY IS NOT SPECIFICALLY NAMED, IT WILL BE RATED BY ANALOGY

Item No.	Commodity	Rates in Cents Per 2000 lbs.	Rates in Cents Per Package
630 A -	Sulphur	60	
-	Sulphur, in ship slings	25	
640 A -	Tallow, in bales	60	
645 -	Tallow, in barrels or casks	Oil Rates apply	
650 -	Tapioca	60	
655 -	Tapioca Flour	60	
660 -	Tea, in boxes and half-chests, individually		8
665 -	Tea, in cases, individually		10
670 -	Tea, in drafts	100	
675 A -	Tin (Slab)	75	
680 -	Tobacco:		
	In bales each weighing 225 lbs. or less		10
	In bales each weighing over 225 lbs.		15
690 -	Vetches	50	
695 -	Walnuts, in bags	50	
700 A -	Walnut heats:		
	In cases, each weighing 30 lbs. net, individually		4
	In cases, each weighing 50 lbs. net, individually		6
	In cases, each weighing 30 lbs. net, Draft weight		3
	In cases, each weighing 50 lbs. net, Draft weight		5
705 A -	Wax:		
	In cases		10
	In bags	60	
710 A -	Whiting, in barrels, each weighing 325 lbs. or less		12½
715 B -	Wool, in bales or bags		12½
	Wool, in bales or bags, including marking and numbering		15
720 A -	Woods, hardwood	75	

Adopted December 19, 1933
Correction No. 326

Effective December 19, 1938

First Revised Page
Cancels
Tariff No. 1 PORT OF OAKLAND Original Page

WEIGHING (Continued)

Item No.	Commodity
•2725 B-	Weighing on truck scales Except as otherwise provided in individual items, the charge for weighing on public truck scales at Grove Street and Outer Harbor Terminal shall be 25¢ per vehicle which charge will include weighing of vehicle both loaded and light. Truck with trailer shall be rated as two vehicles.
#2727	Charge for Issuing Public Weighmaster's Certificate in Connection with Track Scaling of Loaded Railroad Cars. When the Port of Oakland, upon request, assigns a Weighmaster to be present at time of weighing loaded rail cars, also weighing such cars empty, when required, over track scales within the Oakland switching limits for the purpose of ascertaining weights and issuing a Public Weighmaster's Certificate, the charge for such service shall be $2.48 per car.

TARING

NOTE - INCLUDES REMOVING GOODS FROM CONTAINERS, WEIGHING CONTAINERS, AND REPLACING GOODS INTO CONTAINERS. RATES ARE IN CENTS PER PACKAGE.

Item No.	Commodity
2730 -	Baled Freight, N.O.S.: Cassia Rubber
2735 -	Baled Freight containing small mats: Cassia
2740 -	Cased Freight: Canned Goods Cassia Dried Fruit Mace in small cases Mace in large cases Nutmegs Rubber
2745 -	Sacked Freight: Single Sacks Double Sacks

• Change * Addi

Adopted December 19, 1938 Effective December 19,
Correction No. 327

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Fifth Revised Page 56

No. 1 PORT OF OAKLAND

STENCILING, LABELING, MARKING, STRAPPING, ETC.
NOTE - RATES IN CENTS AS NOTED

No.	Service and Commodity	Cents	Per
	Labeling:	1½	Case
	When in conjunction with strapping	1	"
A	Scraping Cases:		
	One Port Mark	1	Case
	Each additional Port Mark, per case	½	"
	One Brand	2	"
	Each additional Brand, per case	½	"
	Stenciling Cases: Except canned pineapple		
	One Port Mark per case	1	Case
	One Brand per case	1	"
	Each additional Port Mark and/or Brand per case	½	Mark or Brand
	One Port Mark and one Brand	1½	Case
	Port Mark, in conjunction with other labor	½	Port Mark
	Brand, in conjunction with other labor exclusive of port marking	½	Brand
	Stenciling canned pineapple	½	Case
C	Stenciling Sacked Goods N.O.S.		
	Weighing 160 lbs. or less per sack	1	Mark
	Weighing over 160 lbs. per sack	1½	"
	When performed in conjunction with other labor	½	Mark
C	Stenciling Sacked Grain:		
	When performed in conjunction with other labor		
	Cancel - See Item 2765-C		
	Blocking out Port Mark on Sacked Goods:		
	Weighing 160 lbs. or less per sack	1	Mark
	Weighing over 160 lbs. per sack	1½	"
C	Stenciling Sacked Beans N.O.S. Cancel - See Item 2765-C		
	When performed in conjunction with other labor. Cancel - See Item 2765-C		
	When performed in conjunction with car unloading. Cancel - See Item 2765-C		
	Tagging Hay	½	Bale
	(Tags to be furnished by shipper)		

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bed April 29, 1940 Effective May 18, 1940
rection No. 361)

Tariff No. 1 — PORT OF OAKLAND — Third Revised Page 87 Cancels Second Revised Page 87

STENCILING, LABELING, MARKING, STRAPPING, ETC. - (Continued)
NOTE - RATES IN CENTS AS NOTED

Item No.	Service and Commodity	Rates in cents per case except as noted
2780-B-	Wire Strapping; Except as provided in Item No. 2795:	
	Apples, fresh, two wires	2.5
	Canned Goods and Dried Fruit:	
	Cases, each weighing 31 lbs. or less:	
	One Wire	(A) 1.225
	Two Wires	(A) 1.85
	Cases, each weighing 31 lbs. but not over 75 lbs:	
	One Wire	(A) 1.35
	Two Wires	(A) 2.35
	Two cases (each weighing 31 lbs. or less) in bundles:	
	Two Wires per bundle	(A) 2.6
2785 -	Citrus Fruits, fresh, two Wires	2.5
2790 -	Honey (including stenciling shipping mark) Two Wires	5
2795 -	Wire Strapping of Dried Fruit - opened by Inspectors on Terminal Properties	
	Single Wire	2
	Double Wire	3
	Bundles	4

(A) Increase

Adopted November 6, 1939 (Correction No. 355) — Effective November 6, 1939

[fol. 2482] EXHIBIT No. 98

Port of Oakland, Board of Port Commissioners

License and Concession Agreement for Use of Real Property

This Agreement made this — day of ——, 19—, by and between the City of Oakland, acting by and through its Board of Port Commissioners, herein referred to as the Port of Oakland or the Port, and herein referred to as the Licensee,

Witnesseth: For the better promotion of commerce and navigation and the development of the Port of Oakland, and on the condition of the faithful performance by Licensee of the covenants and agreements hereinafter set forth, the Port hereby assigns to Licensee the license, concession and privilege to use, solely for the purpose hereinafter set forth, those premises situate in the Port Area of the City of Oakland, County of Alameda, State of California, more particularly described as follows:

1. *Description of Premises:*

together with appurtenances.

[fol. 2483] 2. Term: This license shall commence with —— and continue to —— and ——.

3. *Monthly Rental:* Licensee, without previous demand, shall pay a total rental therefor in the sum of —— ($——), payable $—— on the execution of these presents and $—— on the first day of each succeeding month, commencing —— until such total sum shall have been paid.

4. *Use of Premises:* Except with the prior written consent of the Port, Licensee's use of the described premises shall be restricted to the following purposes, to-wit:

and any use inconsistent with the above purposes shall render this agreement immediately revocable at the will of the Port.

5. *Port Charges and Utilities:* Licensee hereby covenants and agrees to pay to the Port rent in the manner and at the

times herein specified, and in addition thereto, all dockage, tolls, demurrage, service charges, and other port charges incurred by it at any wharf, dock or terminal facility operated by the Port, and for all water, light, fuel, electricity, power, gas and other utilities which may be furnished to or used in or upon said premises during the term of this license.

6. *Taxes and Assessments:* Licensee shall and will pay all lawful taxes, assessments or charges which during the term hereof may become a lien or be levied by the State, County, City or any other tax or assessment levying body upon any interest in this agreement or any possessory right which Licensee may have in or to said land and/or the improvements thereon by reason of its use or occupation thereof, or otherwise, as well as all taxes, assessments and charges on goods, merchandise, fixtures, appliances, equipment and property owned by it in and about said premises.

7. *Signs:* Licensee shall not install any signs or placards either in or on the said premises without the consent of the Port thereto first having been obtained. The Port agrees not to unreasonably withhold its consent to Licensee using signs to represent its business.

8. *Promotion of Port:* Licensee shall in good faith and with all reasonable diligence employ its best endeavors and all practical means to promote and aid the commerce of the Port of Oakland and the use of its facilities. Other things [fol. 2484] being equal, it shall ship through and receive through the municipal docks and terminals operated by the Port all of the goods, materials and other commodities which it may be able to control or direct.

9. *Condition of the Premises:* The taking of possession of said premises by Licensee shall, in itself, constitute acknowledgment by Licensee that said premises have been properly constructed and are in good and tenantable condition.

10. *Repairs, Alterations and Additions:* The Port shall not be obligated to make any repairs, alterations, additions or betterments to said premises during the term hereof. Licensee shall be liable at its own expense to make all repairs to windows and repairs to said premises where the damage is caused by Licensee or its employees, agents, invitees, or persons coming upon said premises by Licensee's

authority or permission. Should Licensee fail to make any repairs for which it is liable, the Port shall have the option to make the same; and Licensee shall immediately reimburse the Port for the cost thereof. The making of such repairs by the Port shall in no event be construed as a waiver of the duty of Licensee to make repairs as herein provided. Licensee may make alterations, additions and betterments to said premises only with the prior written approval of the Port. Licensee waives the right to make repairs at the expense of the Port and waives the benefit of the provisions of Sections 1941 and 1942 of the Civil Code of the State of California relating thereto; and further agrees that if and when any repairs, alterations, additions, or betterments shall be made by it as in this paragraph provided, it promptly shall pay for all labor done or materials furnished in that behalf and shall keep said premises and building and Licensee's possessory interest therein free and clear of any lien or encumbrance of any kind whatsoever.

11. *Title to Improvements:* Licensee agrees that all structures, locks, bolts, repairs, alterations and/or improvements affixed to or made upon said premises by either of the parties hereto, shall be and become the property of the Port, and shall remain upon and be surrendered with the premises as part thereof upon termination of this agreement, save that Licensee may at the termination of this agreement remove its machinery, boilers, tanks (excepting sprinkler systems and tanks used therewith and fixed fire protection apparatus), apparatus, equipment, conveyors, movable partitions and other trade fixtures heretofore and/or hereafter placed thereon by it; provided, the provisions of this paragraph may be waived by resolution of the Board upon application prior to the making of any such improvements.

12. *Liability for Damages:* This agreement is made upon the express condition that the Port shall be free from all liabilities and claims for damages and/or suits for or by reason of any injury or injuries to any person or persons or property of any kind whatsoever, whether the person or property of Licensee, its agents or employees, or third persons, from any cause or causes whatsoever while in or upon said premises or any part thereof during the term of this agreement or occasioned by any occupancy,

or use of said premises or any activity carried on by Licensee in connection therewith, and Licensee hereby covenants and agrees to indemnify and to save harmless the Port from all liabilities, charges, expenses (including counsel fees) and costs on account of or by reason of any such injury or injuries, liabilities, claims, suits or losses however occurring or damages growing out of same.

13. *Hazardous Substances:* No goods, merchandise or material shall be kept, stored or sold in said premises which are in any way explosive or hazardous; and no offensive or dangerous trade, business or occupation shall be carried on therein or thereon, and nothing shall be done on said premises other than as is provided for in paragraph 4 of this agreement which will increase the rate or suspend the insurance from the structures hereby assigned to Licensee or upon adjacent buildings or other structures of the Port, and no machinery or apparatus shall be used or operated [fol. 2485] on said assigned premises which will in any way injure said premises or adjacent buildings, provided, however, that nothing in this paragraph contained shall preclude Licensee from bringing, keeping or using on or about said premises and building such materials, supplies, equipment and machinery as are necessary or customary in carrying out the uses specified in paragraph 4 hereof.

14. *Forfeitures.* It is mutually covenanted, and this agreement is made upon the condition, that if the rents or other sums which Licensee herein agrees to pay, or any part thereof, shall be unpaid on the date on which the same shall become due, or if default be made in all or any of the terms, agreements, conditions or covenants herein contained on the part of Licensee, or should Licensee abandon and cease to use the premises for a period of thirty (30) days at any one time, except when prevented by fire, earthquake, war, strikes, or other calamity beyond its control, then and in any such event, at its option the Port may declare this agreement forfeited, whereupon all improvements of every kind and description shall be forfeited to the Port as liquidated damages and the Port may exercise all rights of entry or re-entry upon said premises.

15. *Right of Entry as Agent:* In any and all cases in which provision is made herein for termination of this agreement, except by forfeiture, or for exercise by the Port

of right of entry or re-entry upon said premises, or in case of abandonment or vacating of the premises by Licensee and the Port may not elect to invoke a forfeiture of said agreement, Licensee hereby irrevocably appoints the Port the agent of Licensee to enter upon said premises and remove any and all persons and/or property whatsoever situated upon said premises, and place all or any portion of said property, except such property as may be forfeited to the Port, in storage for account of and at expense of Licensee; and in such case the Port may relet the premises upon such terms as to it may seem fit, and if a sufficient sum shall not be thus realized, after paying expenses of such re-letting and collecting, to satisfy the rent and other sums herein reserved to be paid, Licensee agrees to satisfy and pay any deficiency, and to pay expenses of such reletting and collecting. Licensee hereby exempts and agrees to save harmless the Port from any cost, loss or damage arising out of or caused by any such entry or re-entry upon said premises and/or the removal of persons, and/or property and storage of such property by the Port or its agents.

16. *Notice of Default:* Notwithstanding anything to the contrary in this agreement contained, no forfeiture shall be declared by the Port, unless and until not less than fifteen (15) days shall have elapsed after written notice of failure of Licensee to perform the terms, agreements, conditions or covenants, or any thereof, herein contained to be performed by Licensee, shall have been given by the Port to Licensee, and no forfeiture of said agreement for any default by Licensee of the performance of any such term, agreement, condition or covenant, shall be declared by the Port, if such default shall have been cured or obviated, prior to the expiration of such notice, even though performance of such term, agreement, condition or covenant shall not have been effected or completed strictly within the period during which same should have been effected or completed; provided that this paragraph shall not apply to forfeitures declared for breaches of paragraphs 3 and 4 hereof.

17. *Surrender and Holding Over:* Licensee covenants that at the expiration of the term of this agreement, or upon its earlier termination, it will quit and surrender said premises in good state and condition, reasonable wear and tear and damage by the elements excepted, and Licensee

agrees forthwith to remove therefrom all machinery, apparatus, boilers, tanks (excepting sprinkler tanks), equipment, conveyors, trade fixtures and personal property be- [fol. 2486] longing to Licensee. Licensee further covenants and agrees that said premises and all structures, foundations and improvements thereon which by and under the terms of this agreement are provided to then remain on the assigned premises and which have become the property of the Port, shall be well and sufficiently repaired and in good tenantable order and condition, with allowance for reasonable wear and tear, and the Port shall have the right on such termination, to enter upon and take possession of all said premises.

Should Licensee hold over the use of said premises after this agreement has terminated in any manner, such holding over shall be deemed merely a holding from month to month and at the rental herein provided for, payable monthly in advance, but otherwise on the same terms and conditions as herein provided.

18. *Destruction of Premises:* Whenever the premises, or any essential part thereof shall be destroyed by fire or other casualty, this agreement shall in case of total destruction terminate, and in case of partial destruction or injury shall terminate at the option of the Port, upon giving at least thirty (30) days notice to Licensee after such fire or injury, and no rent shall accrue to the Port after such termination. Should the Port elect, in such event, not to terminate such agreement it will, with reasonable diligence, restore the premises as near as practicable to their former condition, and Licensee's obligation to pay rent shall be abated during the time and in proportion to the extent that said premises are not tenantable.

19. *Duty to Guard Goods:* Licensee shall assume the responsibility for the guarding and safe keeping of all property and equipment upon or used in connection with the said premises.

20. *Waivers:* No waiver by either party at any time of any of the terms, conditions, covenants or agreements of this agreement or of any forfeiture shall be deemed or taken as a waiver at any time thereafter of the same or any other term, condition, covenant or agreement herein

contained, nor of the strict and prompt performance thereof. No delay, failure or omission of the Port to re-enter said premises or to exercise any right, power, privilege or option arising from any default or subsequent acceptance of rent then or thereafter accrued shall impair any such right, power, privilege or option, or be construed to be a waiver of any such default or relinquishment thereof, or acquiescence therein, and no notice by the Port shall be required to restore or revive time as of the essence hereof after waiver by the Port of default in one or more instances. No option, right, power, remedy or privilege of the Port shall be construed as being exhausted or discharged by the exercise thereof in one or more instances. It is agreed that each and all of the rights, powers, options or remedies given to the Port by this agreement are cumulative, and no one of them shall be exclusive of the other or exclusive of any remedies provided by law, and that exercise of one right, power, option or remedy by the Port shall not impair its rights to any other right, power, option or remedy.

21. *Regulations to be Observed:* Licensee shall not use *use* or permit the said premises to be used in whole or in part during the term of this agreement, for any purpose or use in violation of any present or future laws, ordinances and general rules or regulations at any time applicable thereto of any public or governmental authority, including the City of Oakland and/or its Board of Port Commissioners, relating to sanitation or the public health, safety or welfare, or navigation and use of harbor; and Licensee hereby expressly agrees at all times during the term of this agreement, at its own cost, to maintain the said premises in a clean, wholesome and sanitary condition and in compliance with any and all present and future laws, ordinances and general rules or regulations of any public or governmental authority now or at any time during the [fol. 2487] term of this agreement in force relating to sanitation or public health, safety or welfare, and Licensee shall at all times faithfully obey and comply with all laws, rules and regulations adopted by Federal, state, local or other governmental bodies.

22. *Assignment Prohibited:* Licensee shall not at any time, in any manner, either directly or indirectly, assign, hypothecate, encumber or transfer this agreement or any interest therein, or sub-let the whole or any part of said

premises, or license the use of same in whole or in part without written consent of the Port.

Licensee further covenants and agrees that neither this agreement, nor any interest therein shall be assignable or transferable in proceedings in attachment, garnishment or execution against Licensee, or in voluntary or involuntary proceedings taken under the authority of any bankruptcy act or provision thereof, or in any proceeding in insolvency, or receivership taken by or against Licensee or by any process of law, and that possession of the whole or any part of said premises shall not be divested from Licensee in such proceedings or by any process of law, without written consent of the Port; and any such divesting of possession by Licensee or any assignment, sale or transfer of this agreement, or any interest therein, either voluntarily or by judgment, execution, bankruptcy, receivership, insolvency proceedings, or by process or operation of law, shall at option of the Port be null and void and of no force or effect and shall cause this agreement to terminate immediately at option of the Port.

The restrictions hereinabove contained against assignment or hypothecation of the agreement or any interest therein or subletting of the said premises or any part thereof by the Licensee, shall not be construed or deemed removed or waived at any other subsequent time, or at all, by any consent which the Port may hereafter give in respect to any such matters.

23. *Right to Inspect Premises:* The Port reserves the right to enter upon the premises at any reasonable time to inspect the same and to make any repairs that it may consider necessary to the preservation of the premises. Should any repairs be such as the Licensee should have made hereunder, the Licensee shall immediately reimburse the Port for the cost of such repairs, but the making of such repairs by the Port shall in no event be construed as a waiver of the Port's right to require the Licensee to keep said premises in repair as herein provided.

24. *Additional Provisions (if any):*

[fol. 2488] 25. *Successors:* East and every of the provisions, agreements, terms, covenants and conditions herein contained to be performed, fulfilled, observed and kept

shall, where consent is given by the Port to an assignment, be binding upon the successors and assigns of the respective parties hereto, and the rights hereunder, and all rights, privileges and benefits arising under this agreement and in favor of either party, shall be available in favor of the successors and assigns thereof, respectively; provided no assignment by or through Licensee in violation of the provisions of this agreement shall vest any rights in any such assignee or successor.

26. *No Interest in Land Created:* Licensee agrees that this agreement is a license and concession and not a lease and that no interest or estate in real property, or improvements thereon, is created hereby.

27. *Time of Essence:* Time is expressly declared to be of the essence of this agreement.

28. *Notice:* Any notice required or permitted to be given to Licensee may be given to it at
provided, however, that if Licensee shall give notice in writing to the Port of any change in said address, then and in that event such notice shall be given to Licensee at the changed address specified in such notice.

29. *Agreement in Triplicate:* This agreement shall be executed in triplicate.

In Witness Whereof, the parties hereto thereunto duly authorized, have executed this agreement the day and year first above written.

City of Oakland acting by and through its Board of Port Commissioners By — —, President. Attest: — —, Secretary. — —, Licensee By — — Attest: — —.

Passed as to form and legality this — day of ——, 19—.
— —, Port Attorney.

Port Resolution No. ——.

[fol. 2489] EXHIBIT No. 99

PORT OF OAKLAND BOARD OF PORT COMMISSIONERS CITY OF OAKLAND, CALIFORNIA

Lease of Real Property

This Agreement made and entered into this —— day of —— by and between the City of Oakland, a municipal corporation of the State of California, acting by and through its Board of Port Commissioners, party of the first part, (generally known as the "Port of Oakland," but hereinafter designated as "Lessor") and —— party of the second part, (hereinafter designated as "Lessee"),

Witnesseth:

Lessor, for and in consideration of the rental payments herein provided to be made by Lessee and of the mutual agreements, terms, covenants and conditions herein contained, and following the award of this lease at public auction, upon due advertisement as provided by the Charter of the City of Oakland, has leased and demised, and by these presents does lease and demise unto Lessee, and Lessee by these presents does lease, hire and take from Lessor the following described parcel of land, situate in City of Oakland, County of Alameda, State of California:

1. *Description of Premises:*

Lease Form, 8/7/37, (For periods longer than one year) No modification or deviations from the mimeographed provisions shall be valid unless specifically noted in executed lease.

[fol. 2490] said premises being a portion of the tide and submerged lands and waterfront of the City of Oakland held in trust by Lessor for the promotion and accommodation of commerce and shipping, containing — acres, and the appurtenances.

2. *Term:* The term of this lease shall commence with —— and shall continue for a period of —— years —— —— *to and including —— unless this lease be sooner terminated as hereinafter provided.

*Add number of months or days, if necessary.

3. *Rental:* Lessee shall pay rental for said lease in the total amount of —— ($ ——), as set forth in the bid filed with the Lessor, said rent to be payable in advance in lawful money of the United States of America, or its equivalent, without previous demand, in equal monthly installments on or before the first day of each and every month during said term, except that the last of such installments if payable for less than a full month shall be for the pro rata part of one-twelfth of such annual rent corresponding to the proportion of such amount for which such last installment is payable.

4. *Use of Premises:* The demised premises shall be used by Lessee during said term for the following purposes, and none other, except with the prior written consent of the Lessor evidenced by resolution of its Board of Port Commissioners, provided that the use of said premises shall be at all times consistent with the development of the industrial and commercial activities of the Port of Oakland in the accommodation and promotion of its commerce and shipping.

[fol. 2491] 5. *Other Charges:* In addition to the rental payments herein provided for, Lessee shall pay for all dockage, tolls, demurrage and other port and terminal charges incurred by it or under its direction in the use of the terminal or shipping facilities operated by Lessor and for other services performed for it by the Lessor at the rates and charges prescribed by the tariffs or ordinances of the Port of Oakland, or if not covered by any such tariff or ordinance, at such rates and charges as may be mutually agreed upon. Lessee shall also pay or cause to be paid all dockage and toll charges incurred for the use of any dock, pier, wharf or other terminal facilities, if any, located upon the herein demised premises. No reimbursement of any such charges shall be made to Lessee.

6. *Utilities:* Unless otherwise provided for in paragraph 31 herein, Lessee shall pay for all water, gas, heat, electricity, fuel, power, telephone service, and other utilities, as well as janitor or watchman services, which may be furnished to or used in or about said premises during the term of this Lease.

7. *Promotion of Port:* Lessee shall in good faith and with all reasonable diligence employ its best endeavors and all

practical means to promote and aid the commerce of the Port of Oakland and the use of the municipal facilities or terminals, including, as hereinafter provided, the terminal facilities, if any, located upon the herein demised premises.

Other things being equal, Lessee shall route or cause to be routed for shipment by water from, and ship through and from and receive by water through the terminal facilities of the Port of Oakland, all materials, commodities, merchandise and other goods which shall be owned by and manufactured or otherwise handled by Lessee, or which it can control or direct. It is the intention of the provision of this paragraph and lease that so far as Lessee can, without additional handling or transportation or other expense, it will handle and ship or cause to be handled or shipped all materials, commodities, goods and merchandise shipped, received or handled by it by water to or from the counties bordering upon San Francisco Bay, over the terminal facilities of the Port of Oakland, provided, however, that the provisions of this paragraph shall not apply:

"(a) If and when said municipal terminals of Lessor are occupied and used to capacity;

(b) Unless such materials, commodities, merchandise and other goods can be so shipped on such vessels through and from said terminals to destination at a cost to Lessee (or other person under the direction of Lessee) and/or consignee of such goods (including cost of freight from point of origin to said terminal and the tolls and other regularly established charges incident to the handling of goods through and the shipment of said goods from such terminal) [fol. 2492] not in excess of the cost to Lessee and/or consignee of such goods, of shipping such goods through and from any other established general cargo pier, dock, or terminal in general use at the terminals within the counties bordering on San Francisco Bay, to destination (including cost of freight from point of origin to, and the tolls and other regularly established charges incident to the handling of goods through, and the shipment of said goods from, such other established general cargo pier, dock or terminal within the counties bordering on San Francisco Bay);

(c) If the use of or access to said demised premises or municipal terminals is hindered or obstructed by casualty, damage or other matter beyond the control of Lessee;

(d) If shipment is received by or is to be shipped by ship or shipping lines or land transportation which cannot be conveniently or otherwise accommodated or reached through such municipal terminals and

(e) As to such shipments of goods which the purchaser, consignor or consignee thereof or sound business practice shall require to be delivered direct or caused to be warehoused for delivery direct to a retailer, wholesaler, buyer or consumer located in some other port of the San Francisco Bay area other than the Port of Oakland, or to be shipped from a retailer, wholesaler or producer in such other ports.

Provided, that during the term of this lease, the municipal terminals of Lessor shall at all times be maintained and operated by Lessor, or under its direction in an efficient manner as public terminals for accommodation of shipping of general cargo and package freight by rail, truck and water, and provided further that all dockage, tolls, wharfage, service charges and other tariff rates and costs for services rendered or fixed by Lessor and for use of such terminal shall be reasonable and non-discriminatory, and consistent with standard practice of terminal operation.

Provided, further, however, should the Lessee maintain or operate any wharf or terminal facility upon the premises covered by this lease for the accommodation or promotion of shipping or commerce, the said property shall, for the purposes of the foregoing provisions, be considered a municipal terminal facility, and shipments through and over such facility shall meet the requirements of said provisions.

Lessee shall and will in good faith, and with all reasonable diligence and consistency use its best endeavors and all practical means to use the terminal facilities or said leased premises to its full capacity and to cooperate with Lessor in securing business, traffic and shipments of freight for and through municipal terminals operated by Lessor to the end that it may aid in promoting commerce and shipping of the Port of Oakland.

8. *Harbor Regulations:* Lessee shall at all time faithfully obey and comply with all the laws, rules and regulations adopted by the Board of Port Commissioners or the Council of the City of Oakland, or by federal or state authorities for the protection and governing of the Port of Oakland, the harbor and port area.

9. *Signs:* No signs or placards, except only signs or placards pertaining to or advertising Lessee's business shall be inscribed, painted or placed upon said demised premises, or on the sidewalks adjacent thereto, without written consent of Lessor first had and obtained. If Lessee is a corporation it is within the contemplation of this section that Lessee may permit signs and placards pertaining to business [fol. 2493] of controlled, subsidiary, affiliated and/or controlling corporations of Lessee.

10. *Repairs:* The taking of possession of said demised premises by Lessee shall, in itself, constitute acknowledgment by Lessee that said premises, including structures and improvements thereon, have been properly constructed and are in good and usable condition. Thereafter the Lessor shall not be obligated to make any repairs or alterations to said premises and Lessee agrees that the Lessor shall not be liable to the Lessee or any other person, for any injury or damages that may result from any latent or patent defect in the construction or condition of said premises, or from the neglect of any other tenant or occupant of the premises. Lessee hereby expressly waives the right to make repairs at expense of Lessor, and waives benefit of provisions of Sections 1941 and 1942 of the Civil Code of California relating thereto. Lessee further covenants and agrees, at its own cost and expense, during the term hereof, and with or without notice from Lessor, to keep and maintain said demised premises, including all structures, foundations, windows, plumbing and other improvements thereon, or hereafter placed thereon, in good order, repair and tenantable condition, during the term hereof, damage by fire, earthquake, act of God or of the public enemy, civil commotion or other calamity excepted, and also, subject to the exceptions aforesaid, to make all repairs and replacements (including overhauling and general maintenance), of whatsoever kind or nature to said demised premises and improvements and including repairs and replacements to restore deterioration caused by use or natural decay.

The Lessor shall not be liable for damages or injury to any goods, property or effects in or upon the demised premises caused by gas, water, steam, or other fluid from any source whatsoever, or for the destruction thereof from any cause.

11. *Taxes:* Lessee shall and will pay all lawful taxes, assessments or charges which at any time may be levied by the State, County, City or any other tax or assessment levying body upon any interest in this agreement or any possessory right which Lessee may have in or to said land and/or the improvements thereon by reason of its use or occupation thereof, or otherwise, as well as all taxes, assessments and charges on goods, merchandise, fixtures, appliances, equipment and property owned by it in and about said premises.

12. *Mechanic's Liens:* Lessee agrees to pay for all labor done or materials furnished in repair, replacement or improvement of the demised premises by the Lessee, and to keep said premises and building and Lessee's possessory interest therein free and clear of any lien or encumbrance of any kind whatsoever created by the Lessee's act or omissions.

13. *Improvements and Additions:* Lessee shall, upon securing written consent of the Lessor, and upon submitting plans and specifications therefor, have the right to improve the said premises at its own cost and expense, and without any cost, charge, expense or other liability whatsoever on account or by reason thereof to the Lessor, provided, that, unless otherwise agreed in writing, title to each and every structure and improvement placed upon the demised premises during the term of this lease shall vest in the Lessor on the day of completion thereof, thereafter to be and remain the property of the Lessor, without any expense or cost whatsoever to it.

No additions, alterations, or repairs involving structural [fol. 2494] changes shall be made to said demised premises without prior written consent of the Lessor, and all structures, locks, bolts, repairs, alterations and/or improvements affixed to or made upon said demised premises by either of the parties hereto, shall be and become the property of the Lessor, and shall remain upon and be surrendered with the premises as part thereof upon termination of this agreement save that Lessee may at the termination of this agreement remove its office fixtures, machinery, boilers, tanks (excepting sprinkler systems and tanks used therewith and fixed fire protection apparatus), apparatus, equipment, conveyors, movable partitions and also all trade fixtures to the

extent now permitted by the Civil Code of the State of California, heretofore and/or hereafter placed thereon by it.

14. *Dangerous Uses:* No goods, merchandise or material shall be kept, stored or sold in said demised premises which are in any way explosive or hazardous, and no offensive or dangerous trade, business or occupation shall be carried on therein or thereon, and nothing shall be done on said premises other than as is provided for in paragraph 4 of this agreement which will increase the rate of or suspend the insurance from the structures hereby leased to Lessee or upon adjacent buildings or other structures of the Lessor, and no machinery or apparatus shall be used or operated on said assigned premises which will in any way injure said premises or adjacent buildings, provided, however, that nothing in this paragraph contained shall preclude Lessee from bringing, keeping or using on or about said premises and building such materials, supplies, equipment and machinery as are necessary or customary in carrying on its said business.

15. *Public Regulations:* Lessee shall not use or permit the demised premises to be used in whole or in part during the term of this agreement, for any purpose or use in violation of any present or future laws, ordinances and general rules or regulations at any time applicable thereto of any public or governmental authority, including the City of Oakland and/or its Board of Port Commissioners, relating to sanitation, or the public health, safety or welfare, and Lessee hereby expressly agrees at all times during the term of this agreement at its own cost, to maintain the herein demised premises in a clean, wholesome and sanitary condition and in compliance with any and all present and future laws, ordinances and general rules or regulations of any public or governmental authority now or at any time during the term of this agreement in force relating to sanitation and public health, safety or welfare.

16. *Assignments:* Lessee shall not at any time, in any manner, either directly or indirectly assign, hypothecate, encumber or transfer this agreement or any interest therein, or sublet the whole or any part of the demised premises, or license the use of same in whole or in part without written consent of the Lessor evidenced by resolution of the Board of Port Commissioners. In no event shall any permission

aforesaid for the subletting of such premises be granted in any wise except that the person, firm or corporation receiving the same shall have no right thereby, other than by and under the Lessee and subject to all the terms, covenants and conditions of this lease.

Lessee further covenants and agrees that neither this agreement, nor any interest therein shall be assignable or transferable in proceedings in attachment, garnishment or execution against Lessee, or in voluntary or involuntary proceeding in bankruptcy or insolvency or receivership taken by or against Lessee or by any process of law, and that possession of the whole or any part of the demised premises shall not be divested from Lessee in such proceedings or by any process of law, without written consent of the [fol. 2495] Lessor; and any such divesting of possession by Lessee or any assignment, sale or transfer of this agreement, or any interest therein, either voluntarily or by judgment, execution, bankruptcy, receivership, insolvency proceedings, or by process or operation of law, shall at option of the Lessor be null and void and of no force or effect and shall cause this agreement to terminate immediately upon option of the Lessor.

The restrictions hereinabove contained against assignment or hypothecation of the agreement or any interest therein or sub-letting of the said premises or any part thereof by the Lessee, shall not be construed or deemed removed or waived at any other subsequent time, or at all, by any consent which the Lessor may hereafter give in respect to any such matters.

17. *Insurance:* Lessee shall keep all structures on the demised premises, which belong to or which upon the termination of this lease are to revert to Lessor, insured against fire in an amount equal to at least ninety (90) per cent of the insurable value of said structures. The form of the policies and the companies writing them shall be subject to the approval of Lessor. Such policies shall be delivered to and retained by Lessor, and shall provide that any loss shall be payable to Lessor to be held by it in trust for the purpose of the repair or reconstruction of the damaged or lost structures. In case of such loss occurring, Lessee shall have the right, upon obtaining Lessor's approval of plans therefor, to repair or reconstruct the structures damaged or de-

stroyed, or to construct other structures in lieu thereof, and upon such repair, construction or reconstruction, the insurance paid to Lessor by reason of such loss shall be by it paid to Lessee, when, as and if Lessee pays out moneys for such reconstruction. In case Lessee does not, within ninety (90) days after receipt of the insurance moneys by the City of Oakland, commence the work of repairing and reconstructing, or the constructing of such other improvements and complete same with all reasonable diligence, the Lessor shall have the right to declare the right of use hereby granted at an end as to the structure so damaged or destroyed in which case Lessee shall have no claim whatsoever to said insurance money. Lessor shall not be liable for the cost of said work other than to apply said insurance money thereto and Lessee shall not be required, in order to obtain such reimbursement to undertake reconstruction or new construction of greater cost than the insurable value of such damaged or destroyed structures. Any insurance moneys not required for purposes of such repair, reconstruction or new construction shall belong absolutely to Lessor. It is the intent of this paragraph, in event of damage or destruction of all or a portion of the improvements on the demised land, that Lessee may reconstruct same, or, in lieu thereof, construct other structures as will then reasonably meet the requirements of Lessee's business and beneficial use of said premises in accordance with the general plan and intent of this lease, and Lessor will approve such reconstruction, or alternative new construction as will carry out the intent of this provision, meet the requirements of the business of Lessee, and to the extent of the insurable value, replace the damaged or destroyed portion of said premises.

If during the term of this lease, the structures on the demised premises shall be damaged or destroyed by fire, earthquake, acts of God, or of the public enemy, civil commotion or other calamity, to an extent in excess of fifty (50) per cent of the then value thereof, and provided the Lessor does not elect then or thereafter, as hereinafter provided, to restore the damaged or destroyed structures, Lessee is hereby granted the privilege, upon giving forty-five (45) days' written notice to Lessor (such notice to be given within [fol. 2496] forty-five (45) days after such damage or destruction) to cancel and annul this lease, provided, however, that if in such case Lessee shall not so elect to cancel and annul this lease, it hereby agrees with due diligence to re-

store the damaged or destroyed structures to a good and tenantable condition, subject, however, to each and all of the provisions hereinabove in this paragraph 17 set out, and at its own cost, subject to reimbursement from insurance moneys, if any. Provided further, however, the Lessor may nevertheless elect to restore the damaged or destroyed structures as herein provided, in which event it shall give written notice to such effect within forty-five (45) days, after notice of election by Lessee of its intention to cancel the lease, and prosecute the reconstruction with reasonable diligence and abate the rental on the unused portion during the period of reconstruction.

Lessee shall provide for appraisement of the insurable value of such structures at intervals of three (3) years by an appraiser to be approved by the Lessor, unless otherwise consented to in writing by the Lessor.

In the event of partial or total damage or destruction of structures on the demised premises, Lessee shall be entitled to fair and reasonable abatement of rental, to be determined under circumstances and conditions then existing.

18. *Subject to Charter, Tideland Acts:* This lease and the premises hereby demised shall at all times during the term hereof be subject to the limitations, conditions, restrictions and reservations contained in and prescribed by the Charter of the City of Oakland and the laws of California and should it include any tide or submerged or marsh lands conveyed to the City by the State of California, then it shall be subject to the limitations, conditions, restrictions and reservations contained in and prescribed by the Act of the Legislature which may be applicable thereto.

Lessor reserves and at all times shall have the right of supervision over the uses by Lessee of the leased premises and the right to regulate Lessee's said uses according to the true spirit and intent of said law and this lease and consistently with the provisions, terms, agreements, covenants and conditions thereof.

Lessor hereby further reserves any and all rights of way or other rights for sewer outlets, for gas, oil and water mains and pipe lines, for hydrants, for electric cables and wires and for such other like conduits.

19. *Validity of Lease:* Lessee agrees that all procedure and other provisions of law necessary to effectuate this

agreement have been faithfully complied with and said agreement is a valid and binding document. Further Lessee waives any claim against the City of Oakland, the Board of Port Commissioners, its officers, agents or employees, for damage or loss caused by any suit or proceedings directly or indirectly attacking the validity of this agreement, or any part thereof, or by any judgment or award in any suit or proceeding declaring this agreement, or the expenditure of funds therefor, null, void or voidable, or delaying the same, or any part thereof, from being carried out.

20. *Forfeiture:* It is mutually covenanted, and this agreement is made upon the condition, that if the rents or other sums which Lessee herein agrees to pay, or any part thereof, shall be unpaid on the date on which the same shall become due, or if default be made in any or all of the terms, agreements, conditions or covenants herein contained on the part of Lessee, or should Lessee, except with written consent of Lessor, cease to use the premises for a period of sixty [fol. 2497] (60) days at any one time, except when prevented by fire, earthquake, acts of God or of the public enemy, civil commotion, war, strikes, or other calamity beyond its control, then and in any such event, at its option the Lessor may by resolution of the Board of Port Commissioners declare this agreement forfeited, whereupon this lease shall terminate and all improvements of every kind and description, subject to the provisions of clause 13 hereof, shall be forfeited to the Lessor as liquidated damages and the Lessor may exercise all rights of entry or re-entry upon the demised premises. Lessee shall not be considered in default as to any provisions of this lease, where such default is the result of, or pursuant to, any process, order or decree of any court, governmental, judicial or regulatory body.

21. *Lessor as Agent:* In any and all cases in which provision is made herein for termination of this agreement, except by forfeiture, or for exercise by the Lessor of right of entry or re-entry upon the demised premises, or in case of vacating the premises by Lessee and the Lessor may not elect to invoke a forfeiture of said agreement, Lessee hereby irrevocably appoints the Lessor the agent of Lessee to enter upon the demised premises and remove any and all persons and/or property whatsoever situated upon the demised premises, and place all or any portion of said property, ex-

cept such property as may be forfeited to the Lessor, in storage for account of and at expense of Lessee; and in such case the Lessor may relet the premises upon such terms as to it may seem fit, and if a sufficient sum shall not be thus realized, after paying expenses of such reletting and collecting, to satisfy the rent and other sums herein reserved to be paid Lessee agrees to satisfy and pay any deficiency, and to pay expenses of such reletting and collecting. Lessee hereby exempts and agrees to save harmless the Lessor from any cost, loss or damage arising out of or caused by any such entry or re-entry upon the demised premises and/or the removal of persons and/or property and storage of such property by the Lessor or its agents.

22. *Notice of Default:* Notwithstanding anything to the contrary in this agreement contained, no forfeiture shall be declared by the Lessor unless and until not less than thirty (30) days shall have elapsed after written notice of failure of Lessee to perform the terms, agreements, conditions or covenants, or any thereof, herein contained to be performed by Lessee, shall have been given by the Lessor to Lessee, and no forfeiture of said agreement for any default by Lessee of the performance of any such term, agreement, condition or covenant, shall be declared by the Lessor, if such default shall have been cured or obviated, prior to the expiration of such notice, even though performance of such term, agreement, condition or covenant shall not have been effected or completed strictly within the period during which same should have been effected or completed; provided, that the provisions of this paragraph shall not apply to any forfeitures declared for the breach of Paragraphs 3 and 4 hereof.

23. *Surrender of Premises:* Lessee covenants that at the expiration of the term of this agreement, or upon its earlier termination, it will quit and surrender said demised premises in good state and condition, reasonable wear and tear (consistent with ordinary upkeep), damage by the elements and by fire, earthquake, acts of God or of the public enemy, civil commotion or other calamity, excepted; and Lessee agrees to remove therefrom all machinery, apparatus, boilers, tanks (excepting sprinkler systems and tanks), equipment, conveyors, trade fixtures and personal property belonging to Lessee. Lessee further covenants and

agrees that said premises and all structures, foundations and improvements thereon which by and under the terms of this agreement are provided to then remain on the de- [fol. 2498] mised premises and which have become the property of the Lessor, shall be well and sufficiently repaired and in good tenantable order and condition, with allowance for reasonable wear and tear (consistent with ordinary upkeep), and subject to the exceptions aforesaid, and the Lessor shall have the right on such termination, to enter upon and take possession of all said premises.

24. *Holding Over:* Should Lessee hold over said demised premises after this agreement has terminated in any manner, such holding over shall be deemed merely a tenancy from month to month and at the rental herein provided for, payable monthly in advance, but otherwise on the same terms and conditions as herein provided.

25. *On Destruction:* If during the term of this lease the structures on the demised premises shall be damaged or destroyed by fire, earthquake, act of God or of the public enemy, civil commotion, or other calamity to an extent in excess of fifty (50) per cent of the then value thereof, and the options to restore provided in paragraph 17 shall not be exercised, this agreement shall terminate at the option of either party, whereupon all rights thereunder shall cease.

26. *Storage on Premises:* Lessor shall assume no responsibility for the guarding and safekeeping of property and equipment stored upon or used in connection with the said premises.

27. *Waiver:* No waiver by either party at any time of any of the terms, conditions covenants or agreements of this agreement or of any forfeiture shall be deemed or taken as a waiver at any time thereafter of the same or any other term, condition, covenant or agreement herein contained, nor of the strict and prompt performance thereof. No delay, failure or omission of the Lessor to re-enter the demised premises or to exercise any right, power, privilege or option arising from any default, nor subsequent acceptance of rent then or thereafter accrued shall impair any such right, power, privilege or option, or be construed to be a waiver of any such default or relinquishment thereof, or

acquiescence therein, and no notice by the Lessor shall be required to restore or revive time as of the essence hereof after waiver by the Lessor of default in one or more instances. No option, right, power, remedy or privilege of the Lessor shall be construed as being exhausted or discharged by the exercise thereof in one or more instances. It is agreed that each and all of the rights, powers, options or remedies given to the Lessor by this agreement are cumulative, and no one of them shall be exclusive of the other or exclusive of any remedies provided by law, and that exercise of one right, power, option or remedy by the Lessor shall not impair its rights or any other right, power, option or remedy.

28. *Liability:* This agreement is made upon the express condition that the Lessor shall be free from all liabilities and claims for damages and/or suits for or by reason of any injury or injuries to any person or persons or property of any kind whatsoever from any cause or causes whatsoever while in or upon said demised premises or any part thereof during the term of this agreement or occasioned by any occupancy, or use, of said premises or any activity carried on by Lessee in connection therewith, and Lessee hereby covenants and agrees to indemnify and to save harmless the Lessor from all liabilities, charges, expenses (including counsel fees) and costs on account of or by reason of any such injury or injuries, liabilities, claims, suits or losses however occurring or damages growing out of same.

29. *Modifications:* Notwithstanding any of the provisions of this agreement, the parties hereto may hereafter, by mutual agreement in writing, agree to modifications thereof or additions thereto, provided such amendments do not substantially alter or change the terms thereof and are not forbidden by law.

[fol. 2499] Lessor shall have the right to grant reasonable extensions of time or times, fixed by this lease for any purpose when thereunto first authorized by resolution of the Board of Port Commissioners.

30. *Inspections:* The Lessor reserves the right to enter upon the premises at any reasonable time to inspect the same and to make any repairs that it may consider necessary to the preservation of the premises. Should any repairs be such as the Lessee should have made hereunder,

the Lessee shall immediately reimburse the Lessor for the cost of such repairs, but the making of such repairs by the Lessor shall in no event be construed as a waiver of the Lessor's right to require the Lessee to keep said premises in repair as herein provided.

31. *Additional Provisions or Modifications (if any):*

[fol. 2500] 32. *Successors and Assigns:* Each and every of the provisions, agreements, terms, covenants and conditions herein contained to be performed, fulfilled, observed and kept shall, where consent is given by the Lessor to an assignment, be binding upon the successors and assigns of the respective parties hereto, and the rights hereunder, and all rights, privileges and benefits arising under this agreement and in favor of either party, shall be available in favor of the successors and assigns thereof, respectively; provided no assignment by or through Lessee in violation of the provisions of this agreement shall vest any rights in any such assignee or successor.

33. *Definitions:* The word "Lessor", wherever used in this lease, shall mean City of Oakland (a municipal corporation), including the Board of Port Commissioners, and its or their successor or successors. The words "Board of Port Commissioners", wherever used in this lease, shall mean the administrative or legislative body with authority to act for and represent Lessor. The word "Year" and "Annual", wherever used in this lease, shall refer to a period of twelve (12) calendar months and not necessarily to a calendar year. The word "person" wherever used shall refer to and mean any person, firm or corporation. The word "ships" wherever used in this lease shall include steamers, barges and other watercraft.

34. *Time is Essence:* Time is expressly declared to be of the essence of this lease and of all terms, covenants, agreements, obligations and conditions expressed herein.

35. *Service of Notice:* Any notice required or permitted to be given to Lessee may be given to it at
(here is to be inserted the address of Lessee); provided, however, that if Lessee shall give notice in writing to the Lessor of any change in said address, then and in that event such notice shall be given to Lessee at the changed address specified in such notice.

36. *Payment of Publication:* Lessee shall pay to Lessor upon the making of this lease the cost of publication of notice inviting bids for this lease and of the ordinance granting same.

37. This agreement shall be executed in quadruplicate.

[fol. 2501] In Witness Whereof, the parties hereto thereunto duly authorized have executed this agreement the day and year first above written.

City of Oakland, Lessor, by —— ——, President of the Board of Port Commissioners; Attest: —— ——, Secretary. —— ——, Lessee, by —— ——; Attest, —— ——.

Passed as to form and legality this —— day of ——, 19—.

—— ——, Port Attorney.

Authorized by Port Ordinance No. ——.

(*Note:* Corporate seals should be affixed in execution.)

[fol. 2502] EXHIBIT No. 103

Port of Oakland

Board of Port Commissioners

General Offices: Grove Street Pier, Oakland, California

January 23, 1940.

United States Maritime Commission,
200 Bush,
San Francisco, California

Attention: Mr. Slade

Re Docket No. 555, U. S. M. C.

Gentlemen:

Mr. Jones has instructed me to send you copies of our leases with McCormick Steamship Company and Albers Bros. Milling Company. As we have no extra copy of the latter lease I am enclosing the Notice of Intention in which it is set forth.

There is also enclosed the requested list of our current leases and licenses.

Very truly yours, (Sgd.) Alice S. Troxel, Secretary.

3 enclosures.

[fol. 2503] Leases and Licenses

The following persons or firms hold leases from the Board of Port Commissioners of the City of Oakland:

	Date of Termination
Albers Bros. Milling Co.	June 30, 1959
Atlas Imperial Diesel Engine Co.	October 31, 1953
California Foundries, Inc.	January 31, 1954
Coos Bay Lumber Co.	March 1, 1955
J. E. Higgins Lumber Co.	December 31, 1944
S. T. Johnson	April 30, 1954
Howard Terminal	
Libby, McNeill & Libby	Dec. 14, 1949
Marine Trading Co.	April 17, 1947
E. K. Wood Lumber Company	October 31, 1964
Union Diesel Engine Company	June 30, 1964
Parr Terminal Company	May 31, 1943
Moore Dry Dock Company	June 30, 1964
Rosenberg Bros. & Co. "A" & "AA"	Month to month
Rosenberg Bros. & Co. "E"	October 19, 1944

The following persons or firms hold licenses from the Board of Port Commissioners of the City of Oakland:

	Date of Termination
Voegtly and White	Month to month
Pacific Coast Engineering Co., Inc.	Month to month
Pacific Oil Sales Company	January 31, 1940
San Francisco Stevedoring Co.	Month to month
Marine Terminals Corporation	Month to month
Ethel G. Little	June 30, 1940
Herbert H. Foot	Month to month
Bay Cities Transportation Co.	Month to month
Smith Lumber Company	March 31, 1940
Albert C. Moe	Month to month
Harold R. Fish & Co.	May 31, 1940
McCormick Steamship Company	On notice
Benj. F. Steacy, Jr.	Month to month

Gamerston and Green	May 31, 1940
Oakland Yacht Club	Month to month
Hill & Morton	March 31, 1940
California Redwood Box Company	Month to month

[fol. 2504] (Licenses—continued)

	Date of Termination
Red Salmon Canning Company—if vessels are anchored only.	
The Texas Company	January 31, 1940
Keystone Steel & Wire Co.	February 29, 1940
Bagley-Nunes Co.	Month to month
Ernest A. Blackman	May 31, 1940
Scammell Lumber Company	May 31, 1940
George I. Heinold	June 30, 1940
Standard Mill and Lumber Co.	Month to month
Pacific Dry Dock and Repair Co.	Month to month
Wholesale Lumber Distributors, Inc.	May 31, 1940
Piedmont Lumber and Mill Co.	May 31, 1940
California Builders' Supply Co., Ltd.	August 31, 1940
J. W. Winther and R. S. O'Hare	Month to month
Western Vegetable Oil	

[fol. 2505] EXHIBIT No. 115

Before the United States Maritime Commission

Docket No. 555. Witness T. G. D.

Statement Showing (1) Free Time Allowed Before Assessment of Wharf Demurrage or Storage Charges; (2) Time Basis of Wharf Demurrage or Storage Charges; and (3) Wharf Demurrage or Storage Rate on Merchandise, N.O.S.

Free Time Allowed Before Assessment of Wharf Demurrage or Storage Charges (Exclusive of Sundays and Holidays except as noted)

Terminal	Coastwise Trade	Intercoastal Trade	Foreign and Offshore Trade
Port of Oakland[1*]	10 Days	10 Days	10 Days
Encinal Terminal[2*]	10 Days	10 Days	10 Days
Howard Terminal[2*]	10 Days	10 Days	10 Days
Parr-Richmond Terminal[2 3*]	10 Days	10 Days	10 Days
Port of Stockton[4*]	10 Days#	10 Days#	10 Days#
San Francisco (Assigned Piers)[5]			
Outbound	5 Days	10 Days	10 Days
Inbound	5 Days	5 Days	7 Days
Inbound, in transit**	10 Days	10 Days	10 Days
Islais Creek Grain Terminal[6]	20 Days	20 Days	20 Days
State Terminal	10 Days	10 Days	10 Days
Golden Gate Terminal	10 Days	10 Days	10 Days

[1] Freight from Hawaiian Islands for transhipment to Intercoastal or Foreign vessel has additional free time to make on-carrier connection.

[2] Freight from Hawaiian Islands for transhipment via on-carrier by water has additional free time to make connection.

[3] Petroleum and Petroleum Products, in packages, has 21 days free time when destined to Transpacific ports.

[4] Chrome Ore Concentrates, in bulk, has 30 calendar days free time; Flour has 15 calendar days free time; Grain in connection with export movement has 20 calendar days free time.

[5] Special tariff rules apply to Hardwood Lumber, Logs and Forest Products.

[6] Applies only in connection with Grain.

* When vessels are delayed beyond the free time period because of weather, accidents, breakdowns or other emergencies, such free time period will be extended to cover the additional number of days of delay to the vessel.

Calendar day basis.

** The term "in transit" means cargo routed through the Port of San Francisco and billed to an inland destination.

[fol. 2506] **Time Basis of Wharf Demurrage or Storage Charges**
(Including Sundays and Holidays except as noted)

Terminal	Basis
Port of Oakland	Per Day
Encinal Terminals	Per Day, except Coal, Coke and Sand, in bulk, on a 30-day period basis, plus transfer charge from dock to storage.
Howard Terminal	Per Day, except Coke and Sand, in bulk, on a 30-day period basis, plus transfer charge from dock to storage.
Port of Stockton	Per Day, except Automobiles and Trucks, on own wheels, on a monthly period basis; Chrome Ore or Chrome Ore Concentrates on a 30-day period basis; Grain, N.O.S., in bags, first on a 10-day period basis, and then on a 30-day period basis thereafter, when for export movement; Lumber and Lumber Products on a 10-day period basis.
San Francisco (Assigned Piers)	
Penalty Wharf Demurrage:	
Outbound	Per Day#
Inbound	5-day periods or fraction thereof#
Bulkhead Wharf Demurrage	
Outbound and Inbound	7-day periods or fraction thereof#
Islais Creek Grain Terminal	First 10 days or fraction thereof Next 30 days or fraction thereof, thereafter Each 30 days or fraction thereof
State Terminal Golden Gate Terminal	First 20 days or fraction thereof Next 30 days or fraction thereof, thereafter Each 30 days or fraction thereof

Lumber and Forest Products on both per day and 30-day period basis depending upon pier location, etc.

[fol. 2507] Wharf Demurrage or Storage Rates on Merchandise, N.O.S.
(Including Sundays and Holidays except as noted)

Terminal		Rates
Port of Oakland Encinal Terminals Howard Terminal Parr-Richmond Terminal Port of Stockton		2 cents per ton of 2,000 lbs. per day
San Francisco (Assigned Piers) Penalty Basis Outbound—Coastwise and Inland Waterway Trade	2½	cents per ton per day, weight or measurement (whichever will yield the greatest revenue), for the first 5 days or fraction thereof, then
	5	cents per ton per day for the next 5 days or fraction thereof, and thereafter
	10	cents per ton per day for each succeeding day.
Foreign, Offshore and Intercoastal Trade	2½	cents per ton per day for the first 3 days or fraction thereof, then
	5	cents per ton per day for the next 4 days or fraction thereof, and thereafter
	10	cents per ton per day for each succeeding day.
Inbound—All Trades	25	cents per ton, weight or measurement (whichever will yield the greatest revenue), for the first 5 days or fraction thereof, then
	50	cents per ton for each succeeding period of 5 days or fraction thereof.
Bulkhead Basis—Inbound and Outbound in all trades	12½	cents per ton, weight or measurement (whichever will yield the greatest revenue), for each 7 day period or fraction thereof.
State Terminal Golden Gate Terminal	15	cents per ton for the first 20 days or fraction thereof, then
	25	cents per ton for the next 30 days or fraction thereof, and thereafter
	30	cents per ton for each 30 days or fraction thereof.

Source: Port of Oakland Tariff No. 1, Exhibit No. 71;
Encinal Terminals Tariff No. 1, Exhibit No. 72.
Howard Terminal Tariff No. 2, Exhibit No. 75.
Parr-Richmond Terminal Tariff No. 2, Exhibit No. 77.
Port of Stockton Terminal Tariff No. 3, Exhibit No. 69.
Board of State Harbor Commissioners for San Francisco Harbor Tariff Charges, Exhibit No. 64.

(Here follows Exhibit No. 117, side folios 2508—2511)

[fol. 2508]

EXHIBIT No. 117—WITNESS: DIFFERDING

Before the United States Maritime Commission
Comparison of Wharf Demurrage Charges After Expiration of Free Time Period
(Charges in Cents Per Ton of 2,000 Pounds, Except as Shown)

Commodity and Terminals	Number of Days on Hand																	
	3	5	7	10	15	20	25	30	60	90	120	150	180	210	240	270	300	360
Apricot Kernels; Canned Goods; Fruit, Dried; Oil Cake; Oil Cake Meal; Peas, Dried; Rice; Seed, Sesame; Sugar																		
Port of Oakland, Port of Stockton, Encinal, Howard, Parr-Richmond	3¾	6¼	8¾	12½	18¾	25	31¼	37½	75	112½	150	187½	225	262½	300	337½	375	450
State Terminal (50 cents H/C included)	65	65	65	65	65	65	90	90	120	150	180	210	240	270	300	330	360	420
Golden Gate Terminal	15	15	15	15	15	15	40	40	70	100	130	160	190	220	250	280	310	370
S. F. Assigned Piers—Penalty Wharf Demurrage applicable to inbound cargo	25	25	75	75	125	175	225	275	575	875	1175	1475	1775	2075	2375	2675	2975	3575
S. F. Assigned Piers—Bulkhead Wharf Demurrage applicable to inbound and outbound cargo	12½	12½	12½	25	37½	37½	50	62½	112½	162½	225	275	337½	375	437½	487½	537½	650
Fertilizers, Viz.: Ammonia, sulphate of; Ammonia Phosphate; Cyanamid; Nitrates; Potash; Potash, sulphate of; Phosphates; Urea; and other chemical or prepared fertilizers																		
Port of Oakland, Port of Stockton, Encinal, Howard, Parr-Richmond	4½	7½	10½	15	22½	30	37½	45	90	135	180	225	270	315	360	405	450	540
State Terminal (50 cents H/C included)	57½	57½	57½	57½	57½	57½	70	70	85	100	115	130	145	160	175	190	205	235
Golden Gate Terminal	7½	7½	7½	7½	7½	7½	20	20	35	50	65	80	95	110	125	140	155	185
SF. Assigned Piers—Penalty Wharf Demurrage applicable to inbound cargo	25	25	75	75	125	175	225	275	575	875	1175	1475	1775	2075	2375	2675	2975	3575
S. F. Assigned Piers—Bulkhead Wharf Demurrage applicable to inbound and outbound cargo	12½	12½	12½	25	37½	37½	50	62½	112½	162½	225	275	337½	375	487½	437½	537½	650
[fol. 2509]																		
Excelsior, In Bales																		
Port of Oakland, Encinal, Howard, Parr-Richmond	21	35	49	70	105	140	175	210	420	630	840	1050	1260	1470	1680	1890	2100	2520
Port of Stockton	6	10	14	20	30	40	50	60	120	180	240	300	360	420	480	540	600	720
State Terminal (50 cents H/C included)	65	65	65	65	65	65	90	90	120	150	180	210	240	270	300	330	360	420
Golden Gate Terminal	15	15	15	15	15	15	10	10	70	100	130	160	190	220	250	280	310	370
S. F. Assigned Piers—Penalty Wharf Demurrage applicable to inbound cargo	25	25	75	75	125	175	225	275	575	875	1175	1475	1775	2075	2375	2675	2975	3575
S. F. Assigned Piers—Bulkhead Wharf Demurrage applicable to inbound and outbound cargo	12½	12½	12½	25	37½	37½	50	62½	112½	162½	225	275	337½	375	437½	487½	537½	650
Hops, In Bales																		
Port of Oakland, Port of Stockton, Encinal, Howard, Parr-Richmond	12	20	28	40	60	80	100	120	240	360	480	600	720	840	960	1080	1200	1440
State Terminal (50 cents H/C included)	65	65	65	65	65	65	90	90	120	150	180	210	240	270	300	330	360	420
Golden Gate Terminal	15	15	15	15	15	15	40	40	70	100	130	160	190	220	250	280	310	370
S. F. Assigned Piers—Penalty Wharf Demurrage applicable to inbound cargo	25	25	75	75	125	175	225	275	575	875	1175	1475	1775	2075	2375	2675	2975	3575
S. F. Assigned Piers—Bulkhead Wharf Demurrage applicable to inbound and outbound cargo	12½	12½	12½	25	37½	37½	50	62½	112½	162½	225	275	337½	375	437½	487½	537½	650
[fol. 2510]																		
Merchandise, N.O.S.																		
Port of Oakland, Port of Stockton, Encinal, Howard, Parr-Richmond	6	10	14	20	30	40	50	60	120	180	240	300	360	420	480	540	600	720
State Terminal (50 cents H/C included)	65	65	65	65	65	65	90	90	120	150	180	210	240	270	300	330	360	420
Golden Gate Terminal	15	15	15	15	15	15	40	40	70	100	130	160	190	220	250	280	310	370
S. F. Assigned Piers—Penalty Wharf Demurrage applicable to inbound cargo	25	25	75	75	125	175	225	275	575	875	1175	1475	1775	2075	2375	2675	2975	3575
S. F. Assigned Piers—Bulkhead Wharf Demurrage applicable to inbound and outbound cargo	12½	12½	12½	25	37½	37½	50	62½	112½	162½	225	275	337½	375	437½	487½	537½	650
Moss, Peat or Sphagnum																		
Port of Oakland, Port of Stockton, Encinal, Howard, Parr-Richmond	15	25	35	50	75	100	125	150	300	450	600	750	900	1050	1200	1350	1500	1800
State Terminal (50 cents H/C included)	65	65	65	65	65	65	90	90	120	150	180	210	240	270	300	330	360	420
Golden Gate Terminal	15	15	15	15	15	15	40	40	70	100	130	160	190	220	250	280	310	370
S. F. Assigned Piers—Penalty Wharf Demurrage applicable to inbound cargo	25	25	75	75	125	175	225	275	575	875	1175	1475	1775	2075	2375	2675	2975	3575
S. F. Assigned Piers—Bulkhead Wharf Demurrage applicable to inbound and outbound cargo	12½	12½	12½	25	37½	37½	50	62½	112½	162½	225	275	337½	375	437½	487½	537½	650

Fertilizers, Viz.: Ammonia, sulphate of; Ammonia Phosphate; Cyanamid; Nitrates; Potash; Potash, sulphate of; Phosphates; Urea; and other chemical or prepared fertilizers																		
Port of Oakland, Port of Stockton, Encinal, Howard, Parr-Richmond	4½	7½	10½	15	22½	30	37½	15	90	135	180	225	270	315	360	405	450	540
State Terminal (50 cents H/C included)	57½	57½	57½	57½	57½	57½	70	70	85	100	115	130	145	160	175	190	205	235
Golden Gate Terminal	7½	7½	7½	7½	7½	7½	20	20	35	50	65	80	95	110	125	140	155	185
S. F. Assigned Piers—Penalty Wharf Demurrage applicable to inbound cargo	25	25	75	75	125	175	225	275	575	875	1175	1475	1775	2075	2375	2675	2975	3575
S. F. Assigned Piers—Bulkhead Wharf Demurrage applicable to inbound and outbound cargo	12½	12½	12½	25	37½	37½	50	62½	112½	162½	225	275	337½	375	437½	487½	537½	650
[fol. 2509]																		
Excelsior, In Bales																		
Port of Oakland, Encinal, Howard, Parr-Richmond	21	35	49	70	105	140	175	210	420	630	840	1050	1260	1470	1680	1890	2100	2520
Port of Stockton	6	10	14	20	30	40	50	60	120	180	240	300	360	420	480	540	600	720
State Terminal (50 cents H/C included)	65	65	65	65	65	65	90	90	120	150	180	210	240	270	300	330	360	420
Golden Gate Terminal	15	15	15	15	15	15	40	40	70	100	130	160	190	220	250	280	310	370
S. F. Assigned Piers—Penalty Wharf Demurrage applicable to inbound cargo	25	25	75	75	125	175	225	275	575	875	1175	1475	1775	2075	2375	2675	2975	3575
S. F. Assigned Piers—Bulkhead Wharf Demurrage applicable to inbound and outbound cargo	12½	12½	12½	25	37½	37½	50	62½	112½	162½	225	275	337½	375	437½	487½	537½	650
Hops, In Bales																		
Port of Oakland, Port of Stockton, Encinal, Howard, Parr-Richmond	12	20	28	40	60	80	100	120	240	360	480	600	720	840	960	1080	1200	1440
State Terminal (50 cents H/C included)	65	65	65	65	65	65	90	90	120	150	180	210	240	270	300	330	360	420
Golden Gate Terminal	15	15	15	15	15	15	40	40	70	100	130	160	190	220	250	280	310	370
S. F. Assigned Piers—Penalty Wharf Demurrage applicable to inbound cargo	25	25	75	75	125	175	225	275	575	875	1175	1475	1775	2075	2375	2675	2975	3575
S. F. Assigned Piers—Bulkhead Wharf Demurrage applicable to inbound and outbound cargo	12½	12½	12½	25	37½	37½	50	62½	112½	162½	225	275	337½	375	437½	487½	537½	650
[fol. 2510]																		
Merchandise, N.O.S.																		
Port of Oakland, Port of Stockton, Encinal, Howard, Parr-Richmond	6	10	14	20	30	40	50	60	120	180	240	300	360	420	480	540	600	720
State Terminal (50 cents H/C included)	65	65	65	65	65	65	90	90	120	150	180	210	240	270	300	330	360	420
Golden Gate Terminal	15	15	15	15	15	15	40	40	70	100	130	160	190	220	250	280	310	370
S. F. Assigned Piers—Penalty Wharf Demurrage applicable to inbound cargo	25	25	75	75	125	175	225	275	575	875	1175	1475	1775	2075	2375	2675	2975	3575
S. F. Assigned Piers—Bulkhead Wharf Demurrage applicable to inbound and outbound cargo	12½	12½	12½	25	37½	37½	50	62½	112½	162½	225	275	337½	375	437½	487½	537½	650
Moss, Peat or Sphagnum																		
Port of Oakland, Port of Stockton, Encinal, Howard, Parr-Richmond	15	25	35	50	75	100	125	150	300	450	600	750	900	1050	1200	1350	1500	1800
State Terminal (50 cents H/C included)	65	65	65	65	65	65	90	90	120	150	180	210	240	270	300	330	360	420
Golden Gate Terminal	15	15	15	15	15	15	40	40	70	100	130	160	190	220	250	280	310	370
S. F. Assigned Piers—Penalty Wharf Demurrage applicable to inbound cargo	25	25	75	75	125	175	225	275	575	875	1175	1475	1775	2075	2375	2675	2975	3575
S. F. Assigned Piers—Bulkhead Wharf Demurrage applicable to inbound and outbound cargo	12½	12½	12½	25	37½	37½	50	62½	112½	162½	225	275	337½	375	437½	487½	537½	650
[fol. 2511]																		
Paper and Paper Articles, Viz.: Bags; Boxes, fibre, K.D., folded; Envelopes; Napkins; Tissue, N.O.S.; Towels, Wrapping Paper																		
Port of Oakland, Encinal, Howard, Parr-Richmond (Charges apply on all articles shown except Napkins and Towels)	15	25	35	50	75	100	125	150	300	450	600	750	900	1050	1200	1350	1500	1800
Port of Oakland, Encinal, Howard, Parr-Richmond (Charges apply only on Napkins and Towels)	21	35	49	70	105	140	175	210	420	630	840	1050	1260	1470	1680	1890	2100	2520
Port of Stockton (Charges apply only when packed in rolls, bales or bundles)	3¾	6¼	8¾	12½	18¾	25	31¼	37½	75	112½	150	187½	225	262½	300	337½	375	450
Port of Stockton (Charges apply only when packed in cases)	6	10	14	20	30	40	50	60	120	180	240	300	360	420	480	540	600	720
State Terminal (50 cents H/C included)	65	65	65	65	65	65	90	90	120	150	180	210	240	270	300	330	360	420
Golden Gate Terminal	15	15	15	15	15	15	40	40	70	100	130	160	190	220	250	280	310	370
S. F. Assigned Piers—Penalty Wharf Demurrage applicable to inbound cargo	25	25	75	75	125	175	225	275	575	875	1175	1475	1775	2075	2375	2675	2975	3575
S. F. Assigned Piers—Bulkhead Wharf Demurrage applicable to inbound and outbound cargo	12½	12½	12½	25	37½	37½	50	62½	112½	162½	225	275	337½	375	437½	487½	537½	650

Explanation: Charges indicated on this exhibit taken from: Port of Oakland Tariff No. 1, Exhibit No. 71; Port of Stockton Terminal Tariff No. 3, Exhibit No. 69; Encinal Terminals Tariff No. 1, Exhibit No. 72; Howard Terminal Tariff No. 2, Exhibit No. 75; Parr-Richmond Terminal Tariff No. 1, Exhibit No. 77; State Terminal Co., Ltd., Tariff No. 1, Exhibit No. 67; which covers only the 50 cents handling charge included in the charges shown; and Board of State Harbor Commissioners for San Francisco Harbor Tariff Charges, Exhibit No. 64. All wharf demurrage charges applicable at State Terminal, Golden Gate Terminal and the San Francisco assigned piers are set forth in Exhibit No. 64, with charges on a per ton period basis for the two terminals and on a per ton, weight or measurement, whichever will yield the greater revenue, period basis at the assigned piers. The penalty wharf demurrage charges applicable to outbound cargo have not been shown hereon.

[fol. 2512] EXHIBIT No. 126

Port of Oakland

Operating Report, Fourth Quarter

Twelve Months' Period Ended June 30, 1940

Fiscal Year 1939-1940

COMMISSIONERS
JAMES J. McELROY
PRESIDENT.
EUGENE W. ROLAND
VICE-PRESIDENT
DR. GEORGE C. PARDEE
VICE-PRESIDENT
CLAIRE V. GOODWIN
EDWARD J. SMITH

CABLE ADDRESS OAKPORT

BOARD OF PORT COMMISSIONERS
OF THE
PORT OF OAKLAND
GROVE ST. PIER
OAKLAND, CALIFORNIA

A. H. ABEL
PORT MANAGER
CHIEF ENGINEER AND
SECRETARY

CHARLES A. BEARDSLEY
ATTORNEY

July
22,
1940

Mr. A. H. Abel, Port Manager,
Port of Oakland
Oakland, California

Dear Sir:

The Operations Report as made up in this office for the twelve months' period ending June 30th, 1940, Fiscal Year 1939-1940, is submitted herewith for your consideration with the following schedules.

Schedule No. 1 - Detail by Terminals of Excess Income over Direct and Indirect Expenses.

Schedule No. 2 - Detail of Revenue Items by Terminals.

Schedule No. 3 - Detail of Direct Expenses by Terminals and Indirect Expenses or Overhead by Departments.

Exhibit No. 1 - Detail of Overhead Distribution to Operated Facilities.

Schedule No. 4 - Analysis of Income and Expenses by Terminals both being shown by percentage to one dollar of Income.

Schedule No. 5 - Comparison of Revenue & Expense for the year 1939-1940 with the same period of 1938-1939.

Schedule No. 6 - Statement of Fund No. 226 condition as compared to Fiscal Year 1938-1939.

Schedule No. 7 - Comparative Income and Expenses by Terminals for the year 1939-1940 with the like period of 1938-1939.

General Ledger Balance Sheet as of June 30th, 1940.

Respectfully submitted,

W. H. Tuckett
CHIEF PORT ACCOUNTANT

2513.

1221

[fol. 2514]

Port of Oakland
Analysis of Income of All Facilities
End of 4th Quarter—Year 1939–1940
July 1st, 1939 to June 30th, 1940

	Total Amount	Grove St. Terminal	Outer Harbor Terminal	Livingston & Dennison St. Piers	Ninth Avenue Terminal	Rental & Leased Facilities	Airport
Income							
Total Income from Tonnage Operations	$543,426.53	$101,447.29	$335,684.12	$7,640.00	$55,652.43	$43,002.69	.....
Total Income from Rental Operations	258,418.29	2,699.40	126,462.88	900.00	26,568.07	101,787.94	.....
Total Income from Airport Operations	56,681.83	.....	.....	.....	.....	.....	$56,681.83
Total Income from All Operations	$858,526.65	$104,146.69	$462,147.00	$8,540.00	$82,220.50	$144,790.63	$56,681.83
Rental of Administrative Offices—Grove St. Pier	5,978.88	5,978.88					
	$864,505.53	$110,125.57					
Expenses							
Total Direct & Indirect Expenses**	561,779.40	92,520.57	334,085.19	5,133.16	39,622.90	18,039.67	72,377.91
Excess or Deficit of Income over Expenses—All Operations	$302,726.13	$17,605.00	$128,061.81	$3,406.84	$42,597.60	$126,750.96	($15,696.08)
Miscellaneous Income from Sources other than Operations							
Gasoline Drained from Automobile Shipments	4.15						
Salvage Materials Sold	685.00						
Net Excess or Deficit of Income over Expenses	$303,415.28						
Depreciation on Equipment	(15,381.86)						
Depreciation on Buildings, Structures & Improvements	(270,652.85)	(286,034.71)	(38,160.38)	(115,936.33)	(16,224.67)	(30,993.44)	(23,464.01)	(45,874.02)
Net Profit or Loss	$17,380.57	($20,555.38)	$12,125.48	($12,817.83)	$11,604.16	$103,286.95	($61,570.10)

* See Schedule #2 for Detail of All Revenue except Rental & Leased Facilities which are shown below.
** See Schedule #3 for Direct or Indirect Expenses.

Analysis of Rentals & Leased Facilities

Service	Total Amount	Inland Waterways Terminal	Miscellaneous Income Properties	Leased Facilities: Albers Bros. Milling Co.	Howard Wharves	Howard Quay Wall	E. K. Wood Lumber Co.
Dockage	$ 9,339.85	$ 3,861.90	$ 742.03	$ 500.15	$ 1,833.67	$ 1,992.95	$ 409.15
Tolls	33,161.96	1,840.27	2,184.49	2,912.25	12,337.03	12,280.15	3,607.77
Storage	12.90		12.90				
Water	144.18		144.18				
Electricity	171.30		171.30				
Lumber Storage	172.50		172.50				
Total Tonnage Revenue	$ 43,002.69	$ 5,702.17	$ 3,427.40	$ 3,412.40	$14,170.70	$14,273.10	$2,016.92
Rentals	101,787.94	4,529.76	79,258.18	13,000.00	.....	1,200.00	3,800.00
Total Revenue	$144,790.63	$10,231.93	$82,685.58	$16,412.40	$14,170.70	$15,473.10	$5,816.92

Figures in parentheses indicate credit or deduction.
Schedule No. 1—CSG

[fol. 2515]

Port of Oakland
Analysis of Income of All Facilities
End of Fourth Quarter Year 1939–1940—July 1st, 1939 to June 30th, 1940

	Total Amount	Grove Street	Market Street	Dennison Street	Livingston Street	Ninth Avenue	Ninth Ave. McCormick	O. H. T.	7th Street Unit	Oht. Ind. Area	Tmn'l Bldg. "C"	Rental & Leased Facilities	Airport
Operating Facilities:													
Dockage	$ 33,694.94	$ 2,970.57	$ 627.75	$ 415.15	$ 821.03	$ 4,570.55	$ 3,574.05	$ 7,105.35	$ 3,338.94	$ 931.70		$ 9,339.85	
Tolls	150,041.01	16,483.40	3,318.06	1,496.20	3,027.45	17,614.29	10,574.67	37,437.61	26,921.37	6.00		33,161.96	
Service	168,396.59	43,571.34	8,685.40	77.03	6.60	84.35		106,195.97	9,775.90				
Loading & Unloading	46,792.02	9,394.15	912.13					35,900.88	584.86				
Checking	14,642.91	2,370.33	464.50					11,673.59	134.49				
Storage	44,456.42	5,153.45	2,243.68		226.34		2,990.17	25,893.54	7,613.36	16.00	306.98	12.90	
Labor—Recooperage	3,765.54	905.40	49.80					2,810.34					
Handling Lines	6,771.88	1,616.85	408.83					4,373.90	372.30				
Materials	1,210.43	195.95	20.68			47.50		946.30					
Stenciling	7,020.45	12.88	60.00					6,940.45	7.12				
Strapping	570.01							570.01					
Weighing	2,872.59	443.35	12.78					1,392.23	1,000.29		23.94		
Telephone	380.60	51.32	9.47	.73	48.06	126.91		117.52	26.59				
Water	3,331.68	491.75	64.28	8.98	12.24	620.03	239.46	535.59	741.41	468.26	5.50	144.18	
Equipment Rentals	3,308.31	253.34	83.00			1,812.50		720.42	33.93		405.12		
Electricity	2,818.18	1.92				26.36	208.14	947.84	1,230.25	232.37		171.30	
Side Tracking	10,708.52					10,694.04	14.48						
Lumber Storage	2,885.93				1,037.04	1,676.39						172.50	
Pipe Line Service	25,011.53								25,011.53				
Freight Transfer Service	3,267.92							3,267.92					
Supervision	1,243.18	3.18		110.25	352.63	732.49	44.63						
Transferring & Piling	9,382.65							9,382.65					
Miscellaneous	853.24	461.00	106.75	.19	.08	1.42		283.80					
Total Tonnage Revenue	543,426.53	84,380.18	17,067.11	2,108.53	5,531.47	38,006.83	17,645.60	256,495.91	76,792.34	1,654.33	741.54	43,002.69	
Rentals of Trackage	6,703.20							6,703.20					
Rentals of Buildings & Structures	251,715.09	2,126.68	572.72	900.00		17,887.40	8,680.67	94,636.61	5,650.17	7,006.61	12,466.29	101,787.94	
	801,844.82	86,506.86											
Rental Admin. Offices—Grove St. Pier	5,978.88	5,978.88											
Total Tonnage & Rental Revenue	807,823.70	92,485.74	17,639.83	3,008.53	5,531.47	55,894.23	26,326.27	357,835.72	82,442.51	8,660.94	13,207.83	144,790.63	
Airport													
Hangar Leases & Storage													$32,411.51
Transient Hangars													1.25
Landing Fees													1,200.00
Commercial Privileges													1,370.00
Office & Leantos													3,848.26
Restaurant & Inn													3,600.00
Gasoline & Oil Commission													6,780.92
Vending Machine Commission	56,681.83												3.85
Telephone Commission													820.62
Telegraph Commission													291.66
Light & Power													3,633.64
Water													810.87
Lockers & Tool Boxes													22.50
Administrative Services													1,487.29
Gas & Oil Sales													9.02
Miscellaneous													390.44
Total Income from All Operations	$864,505.53	$92,485.74	$17,639.83	$3,008.53	$5,531.47	$55,894.23	$26,326.27	$357,835.72	$82,442.51	$8,660.94	$13,207.83	$144,790.63	$56,681.83

* See Schedule # 1 for Details of Rental & Leased Facilities.

Analysis of Income of All Facilities—Recapitulation.

	Detail	Amount
Grove Street Pier	$92,485.74	
Market Street Pier	17,639.83	
		$110,125.57
Dennison Street Pier	3,008.53	
Livingston Street Pier	5,531.47	
		8,540.00
9th Avenue Pier	55,894.23	
9th Avenue McCormick	26,326.27	
		82,220.50
Outer Harbor Terminal	357,835.72	
Seventh Street Unit	82,442.51	
Outer Harbor Industrial Area	8,660.94	
Terminal Building "C"	13,207.83	
		462,147.00
Rental & Leased Facilities		144,790.63
Airport		56,681.83
Total Income from All Operations		$864,505.53

Schedule No. 2.
CSG

[fol. 2516]

Port of Oakland
Expense Statement
*End of 4th Quarter—Year 1939-1940
July 1st, 1939 to June 30th, 1940

Expenses	Total	Grove St. Terminal	Outer Harbor Terminal	Livingston & Dennison St. Piers	Ninth Avenue Terminal	Rental & Leased Facilities	Airport
Direct Expenses							
Personal Service	$307,434.47	$55,826.42	$199,339.28	$2,620.86	$18,916.82	$2,490.38	$28,240.71
Supplies & Materials	8,610.61	1,008.67	5,206.54	.91	781.46	3.86	1,609.17
Light, Power, Heat & Water	19,945.76	2,711.87	7,304.27	52.84	1,798.77	761.28	7,316.73
Transportation	2,716.71	116.42	890.07	.....	104.63	.....	1,605.59
Insurance & Bonds	14,183.41	2,560.13	6,207.14	107.52	1,737.39	480.63	3,090.60
Communication	4,993.22	595.17	2,660.19	152.06	281.48	.....	1,304.32
Other Expenses	8,122.68	467.10	6,251.93	.....	108.93	557.38	737.34
Maintenance	64,223.45	7,321.43	30,475.14	1,016.85	5,271.62	6,218.21	13,920.20
Total Direct Expenses	$430,230.31	$70,607.21	$258,334.56	$3,951.04	$29,001.10	$10,511.74	$57,824.66
Indirect Expenses or Overhead (Detail Below)*	131,549.09	21,913.36	75,750.63	1,182.12	10,621.80	7,527.93	14,553.25
Total Expenses to Operations	$561,779.40	$92,520.57	$334,085.19	$5,133.16	$39,622.90	$18,039.67	$72,377.91

Indirect Expenses	Total	Administrative & Engineering	Traffic & Operating	General Waterfront	Port Promotion & Operations
Personal Service	$80,344.69	$58,369.84	$8,158.60	$9,557.18	$4,259.07
Supplies & Materials	10,331.11	855.09	1,406.98	2,070.47	5,998.57
Light, Power, Heat & Water	79.02	.....	.....	79.02	.....
Transportation	4,733.44	860.76	3,043.05	280.06	549.57
Insurance & Bonds	6,782.69	610.40	2,107.03	3,979.02	86.24
Communication	3,414.49	794.30	1,381.69	62.78	1,175.72
Other Expenses	41,373.20	28,963.44	7,990.46	103.58	4,315.72
Maintenance	15,461.00	5,606.17	412.13	9,254.13	188.57
Total Overhead	$162,519.64	$96,060.00	$24,499.94	$25,386.24	$16,573.46
Overhead to Additions & Betterments	30,970.55	14,026.11	.....	16,944.44	.....
Overhead to Operations*	$131,549.09	$82,033.89	$24,499.94	$8,441.80	$16,573.46

* Note: For Distribution to Operations see Schedule #3—Exhibit #1.

64—20-22

1925

[fol. 2517]

Port of Oakland
Distribution of Overhead Charges to Operations
End of Fourth Quarter Year 1939–1940
July 1st, 1939 to June 30th, 1940

Overhead Charges	Total	Grove St. Terminal	Outer Harbor Terminal	Livingston & Dennison St. Piers	Ninth Ave. Terminal	Rentals & Leased Facilities	Airport
Personal Service	$64,764.41	$11,092.27	$38,004.34	$568.58	$4,982.58	$2,708.99	$7,407.65
Supplies & Materials	8,990.35	1,232.21	4,704.18	86.95	846.50	1,281.96	838.55
Light, Power, Heat & Water	33.14	3.70	8.78	.06	3.44	3.82	13.34
Transportation	4,413.97	779.10	2,629.43	54.01	419.48	364.36	167.59
Insurance & Bonds	4,352.70	687.56	2,096.37	36.80	431.07	375.85	725.05
Communication	3,242.59	530.14	1,895.34	36.18	300.00	316.65	164.28
Other Expenses	36,398.89	6,237.92	22,027.83	347.43	2,853.72	1,849.18	3,082.81
Maintenance	9,353.04	1,350.46	4,384.36	52.11	785.01	627.12	2,153.98
Totals	$131,549.09	$21,913.36	$75,750.63	$1,182.12	$10,621.80	$7,527.93	$14,553.25

[fol. 2518]

Port of Oakland
Analysis of Income and Expenses
End of 4th Quarter—Year 1939–1940
July 1st, 1939 to June 30th, 1940

	Total	Grove St. Terminal	Outer Harbor Terminal	Livingston & Dennison St. Piers	Ninth Avenue Terminal	Rental & Leased Facilities	Airport
Income							
From Tonnage Operations	62.86%	92.12%	72.64%	89.46%	67.69%	29.70%	.....
From Rental Operations	30.58	7.88	27.36	10.54	32.31	70.30	.....
From Airport	6.56	.....	.....	.....	.....	.....	100%
Total Income from All Operations	100%	100%	100%	100%	100%	100%	100%
Direct Expenses							
Personal Service	35.56%	50.70%	43.13%	30.69%	23.01%	1.71%	49.82%
Supplies & Materials	.99	.92	1.13	.01	.95	.01	2.84
Light, Power, Heat & Water	2.31	2.46	1.58	.62	2.18	.53	12.91
Transportation	.31	.11	.19	.....	.12	.....	2.83
Insurance & Bonds	1.64	2.32	1.34	1.26	2.12	.33	5.45
Communication	.58	.54	.58	1.78	.34	.....	2.31
Other Expenses	.95	.42	1.36	.....	.13	.38	1.30
Maintenance	7.43	6.65	6.59	11.91	6.42	4.30	24.56
Total Direct Expenses	49.77%	64.12%	55.90%	46.27%	35.27%	7.26%	102.02%
Indirect Expense or Overhead	15.21	19.90	16.39	13.84	12.92	5.20	25.67
Total Direct & Indirect Expenses	64.98%	84.02%	72.29%	60.11%	48.19%	12.46%	127.69%
Excess or Deficit of Income Over Expenses	35.02	15.98	27.71	39.89	51.81	87.54	(27.69)
	100%	100%	100%	100%	100%	100%	100%

Note: Percentages are based on Individual Income & Expense Ratios to Total Income for each Unit.
( ) = Red.

(Here follows 1 paster, side folio 2519)

EXPENSES FISCAL YEAR 1939-1940

	TOTAL	OUTER HARBOR	GROVE STREET	9TH AVE.
Transportation				
1. Railroad & Other Fares	$ 582.90	$ 492.60	$ 90.30	
2. Room & Meals	281.82	183.40		$ 98.42
4. Gas & Oil (Auto Operation)	91.59	59.26	26.12	6.21
5. Express & Parcel Post	5.25	5.25		
7. Entertaining Shippers	147.56	147.56		
15. Miscellaneous	2.00	2.00		
Subtotal	$ 1,111.12	$ 890.07	$ 116.42	$ 104.63
Overhead	3,828.01	2,629.43	779.10	419.48
Total	$ 4,939.13	$ 3,519.50	$ 895.52	$ 524.11
Insurance & Bonds				
1. Fire Insurance	$ 7,631.59	$ 4,247.38	$ 2,001.15	$ 1,383.06
3. Auto Insurance (All Kinds)	64.87	35.57	20.61	8.69
8. A.D.T. Service	1,806.60	993.14	472.82	340.64
9. Compensation	449.74	449.74		
10. Hospitalization	551.86	481.31	65.55	5.00
Subtotal	$ 10,504.66	$ 6,207.14	$ 2,560.13	$ 1,737.39
Overhead	3,215.00	2,096.37	687.56	431.07
Total	$ 13,719.66	$ 8,303.51	$ 3,247.69	$ 2,168.46
Communications				
1. Telegraph & Telephone	$ 3,287.78	$ 2,534.85	$ 483.07	$ 269.86
2. Postage	249.06	125.34	112.10	11.62
Subtotal	$ 3,536.84	$ 2,660.19	$ 595.17	$ 281.48
Overhead	2,725.48	1,895.34	530.14	300.00
Total	$ 6,262.32	$ 4,555.53	$ 1,125.31	$ 581.48
Other Expenses				
2. Equipment Rent	$ 818.01	$ 783.98	$ 34.03	
3. Advertising	108.93			$ 108.93
6. Absorptions	3,055.12	2,722.09	333.03	
8. O.S. & D. Claims	2,816.57	2,726.21	90.36	
13. Photographs	13.38	3.70	9.68	
14. Legal Expenses, Printing, etc.	3.35	3.35		
15. Miscellaneous	12.60	12.60		
Subtotal	$ 6,827.96	$ 6,251.93	$ 467.10	$ 108.93
Overhead	31,119.47	22,027.83	6,237.92	2,853.72
Total	$ 37,947.43	$ 28,279.76	$ 6,705.02	$ 2,962.65

[fol. 2519]

Port of Oakland
Comparison of Actual Revenue & Expenses for Each Quarter
Years 1938-39 & 1939-40

	Actual at End of First Quarter				Actual at End of Second Quarter				Actual at End of Third Quarter				Actual at End of Fourth Quarter			
	1938-1939		1939-1940		1938-1939		1939-1940		1938-1939		1939-1940		1938-1939		1939-1940	
	Amount	%	Amount	%	Amount	%	Amount	%	Amount	%	Amount	%	Amount	%	Amount	%
Revenue																
Ninth Avenue Terminal	$16,190.68	7.59%	$19,524.08	8.96%	$33,076.41	7.22%	$40,311.79	9.28%	$52,905.24	7.89%	$61,046.73	9.52%	$72,268.06	8.24%	$82,220.50	9.51%
Grove Street Terminal	23,381.50	10.96	26,148.62	11.99	45,015.47	9.83	49,406.96	11.37	74,586.36	11.12	80,863.50	12.61	93,550.87	10.66	110,125.57	12.74
Outer Harbor Terminal	124,985.68	58.56	117,310.05	53.83	281,929.50	61.54	244,420.39	56.26	398,702.41	59.45	351,806.76	54.84	521,078.70	59.39	462,147.00	53.46
Liv. & Den. St. Piers	1,521.84	.71	2,204.88	1.01	2,703.68	.61	4,141.91	.96	3,967.73	.59	6,358.51	.99	5,806.15	.66	8,540.00	.99
Rental & Leased Fac	34,149.10	16.00	39,134.35	17.96	69,002.58	15.06	68,645.80	15.80	100,667.81	15.02	98,274.98	15.48	131,399.75	14.98	144,790.63	16.74
Airport	13,187.14	6.18	13,620.96	6.25	26,431.67	5.74	27,509.40	6.33	39,823.54	5.93	42,111.55	6.56	53,285.08	6.07	56,681.83	6.56
Total Revenue	$213,415.94	100%	$217,942.94	100%	$458,159.31	100%	$434,436.25	100%	$670,653.09	100%	$641,462.03	100%	$877,388.61	100%	$864,505.53	100%
Expenses																
Personal Expenses (Except Mtnce.)	$103,137.54	48.33%	$84,238.25	38.65%	$199,641.17	43.57%	$189,060.20	43.51%	$296,929.92	44.27%	$278,719.99	43.45%	$387,312.96	44.15%	$372,198.88	43.05%
Supplies & Materials	4,823.70	2.26	5,663.49	2.59	10,117.21	2.21	8,705.18	2.00	14,889.84	2.22	12,339.33	1.92	18,079.52	2.06	17,600.96	2.04
Lt., Power, Heat & Water	4,699.15	2.20	4,052.10	1.86	10,333.64	2.26	8,757.20	2.02	16,495.44	2.46	13,831.26	2.16	21,529.34	2.45	19,978.90	2.31
Transportation	1,790.31	.84	2,246.60	1.03	4,122.96	.90	4,001.85	.92	5,746.82	.87	5,942.20	.93	7,935.62	.90	7,130.68	.82
Insurance & Bonds	4,457.17	2.09	4,908.73	2.25	9,656.86	2.11	9,376.97	2.16	17,456.09	2.60	13,775.98	2.15	22,923.12	2.61	18,536.11	2.14
Communication	2,515.04	1.18	2,049.73	.95	5,442.69	1.19	4,529.65	1.04	7,940.79	1.18	6,786.49	1.06	10,665.54	1.22	8,235.81	.95
Other Expenses	5,138.59	2.41	9,291.42	4.26	12,171.05	2.66	21,531.74	4.96	20,578.95	3.07	31,359.42	4.89	25,837.38	2.94	44,521.57	5.16
Maintenance (Including Personal Service)	8,223.56	3.85	11,693.34	5.37	33,684.72	7.34	36,441.15	8.39	44,420.47	6.62	54,047.31	8.42	60,357.00	6.88	73,576.49	8.51
Total Expenses	$134,785.06	63.16%	$124,143.66	56.96%	$285,170.30	62.24%	$282,403.94	65.00%	$424,458.32	63.29%	$416,801.98	64.98%	$554,640.48	63.21%	$561,779.40	64.98%
Excess Revenue Over Expenses	$78,630.88	36.84%	$93,799.28	43.04%	$172,989.01	37.76%	$152,032.31	35.00%	$246,194.77	36.71%	$224,660.05	35.02%	$322,748.13	36.79%	$302,726.13	35.02%

EXPENSES FISCAL YEAR 1939-1940

	TOTAL	OUTER HARBOR	GROVE STREET	9TH AVE.
Maintenance				
1. Personal Service	$ 11,983.70	$ 7,018.83	$ 2,860.96	$ 2,103.91
2. Sundry Materials	3,558.42	2,185.99	441.42	931.01
3. General Supplies	368.42	180.11	128.73	59.58
4. Auto & Tractor Tires & Tubes	152.31	118.66	20.92	12.73
5. Equipment Rental	219.06	231.24	1.93	10.85
6. Outside Repairs	2,916.03	2,059.67	355.48	500.88
7. Gas used in Tractors	26.63	8.06	1.28	17.29
8. Fire Extinguishers	173.62	72.58	94.57	6.47
0. Dredging	23,670.00	18,600.00	3,420.00	1,650.00
Subtotal	$ 43,068.19	$ 30,475.14	$ 7,321.43	$ 5,271.62
Overhead	6,519.83	4,384.36	1,350.46	785.01
Total	$ 49,588.02	$ 34,859.50	$ 8,671.89	$ 6,056.63
Total Direct Charges	$357,942.87	$258,334.56	$ 70,607.21	$ 29,001.10
" Overhead "	108,285.79	75,750.63	21,913.36	10,621.80
Grand Totals	$466,228.66	$334,085.19	$ 92,520.57	$ 39,622.90

[fol. 2520]

Port of Oakland
Comparative Financial Statement for Six Months
Harbor Maintenance & Improvement Fund #226
Period July 1st to June 30th
Fiscal Years 1938–1939 and 1939–1940

	Fiscal Year 1939–1940		Fiscal Year 1938–1939	
	Item Amount	Total	Item Amount	Total
Unexpended Cash—July 1st of Each Period		$135,748.75		$76,636.05
Cash Received from Terminal Operations	$893,540.71		$883,434.53	
Cash Funds Transferred from Fund #220			20,000.00	
Total Cash Received during Period		893,540.71		903,434.53
Total Cash Accrued to Fund #226 as of June 30th		$1,029,289.46		$980,070.58
Less: Expenditures during Period				
Pay Rolls, Weekly & Monthly	$511,839.09		$521,924.64	
Miscellaneous Claims	200,361.24		234,424.08	
Transferred to City General Fund a/c Mileage Gasoline Co. (Res. #4800)			1,218.00	
Contracts	76,373.97		86,755.11	
Total Cash Expended		788,574.30		844,321.83
Total Unexpended Cash as of June 30th		$240,715.16		$135,748.75
Less: Operating Reserves				
Contracts	$7,435.17		$19,470.76	
Merritt Estate	4,891.67		4,891.67	
Total Reserves as of June 30th		$12,326.84		$24,362.43
Actual Unencumbered Cash in Fund #226, as of June 30th		$228,388.32		$111,386.32
Plus: Special Cash Reserve Funds				
Port Replacement & Improvement Fund #220	$25,000.00		$25,000.00	
Port Contingency Fund #222	50,000.00		50,000.00	
Total Cash in Special Reserve Funds		$75,000.00		$75,000.00
Total Unencumbered Cash in All Reserve Funds		$303,388.32		$186,386.32

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Port of Oakland
Comparative Financial Statement for Six Months
Harbor Maintenance & Improvement Fund #226
Period July 1st to June 30th
Fiscal Years 1938–1939 and 1939–1940

	Fiscal Year 1939–1940		Fiscal Year 1938–1939	
	Item Amount	Total	Item Amount	Total
Plus: Book Account Resources Accrued				
Certificate of Indebtedness—Pacific Steamship Lines, Ltd.	$12,057.86		$13,341.69	
Current Accounts Receivable as of June 30th (See Note Below #)	#67,413.91		25,779.05	
Accounts Receivable in Legal Department (See Note Below #)	11,268.81		10,993.42	
Total Accrued Accounts Receivable		90,740.58		50,114.16
		$394,128.90		$236,500.48
Plus: Prepaid Items & Advances				
Insurance Prepaid	$19,798.24		$30,509.54	
Right of Way—9th Avenue Terminal (Court Deposit)			10,006.00	
Port Revolving Fund	15,000.00		15,000.00	
Petty Cash	250.00		150.00	
Total Prepaid Items		35,048.24		55,665.54
Total Fund Resources as of June 30th		$429,177.14		$292,166.02
Plus: Additions to Property during Period thru Fund #226				
Land Purchases			$30.00	
Additions & Betterments	$229,640.35		241,784.87	
Allowance to Albers Bros. Milling Co. & Albert C. Moe	10,785.36		15,999.96	
Total Additions & Betterments	$240,425.71		$257,814.83	
Equipment	13,808.49		18,414.13	
Gasoline, Oil & Miscellaneous Stores	177.95		128.41	
Total Property Additions for Period Ending June 30th		254,056.25		276,357.37
Total Fund Resources Accrued & Property Additions for Period Ending June 30th		$683,233.39		$568,523.39

#Note: For Fiscal Year 1939–1940, this amount includes $14,961.84 each due from the Southern Pacific Company and the Oakland Terminal Railway, payable over a period of four years from October 20th, 1939.

[fol. 2521]

Port of Oakland
Comparative Statement of Income & Expenses
Period of July 1st to June 30th,
Fiscal Years 1938–1939 and 1939–1940

	Fiscal Year 1939–1940					Fiscal Year 1938–1939				
Terminals Operated	Tonnage Revenue	Rents	Total Income	Direct Expenses	Excess or Deficit	Tonnage Revenue	Rents	Total Income	Direct Expenses	Excess or Deficit
Grove & Market St. Terminals	$101,447.29	$8,678.28	$110,125.57	$70,607.21	$39,518.36	$83,971.59	$9,579.28	$93,550.87	$72,958.16	$20,592.71
Outer Harbor Terminal	335,684.12	126,462.88	462,147.00	258,334.56	203,812.44	399,548.57	121,530.13	521,078.70	275,356.56	245,722.14
Livingston & Dennison St. Piers	7,640.00	900.00	8,540.00	3,951.04	4,588.96	4,906.15	900.00	5,806.15	4,501.07	1,305.08
Ninth Avenue Terminal	55,652.43	26,568.07	82,220.50	29,001.10	53,219.40	50,331.80	21,936.26	72,268.06	28,675.69	43,592.37
*Leased Facilities & Miscellaneous Rents (Income Detailed Below)	43,002.69	101,787.94	144,790.63	10,511.74	134,278.89	39,436.85	91,962.90	131,399.75	9,941.69	121,458.06
Airport	.....	.....	56,681.83	57,824.66	(1,142.83)	.....	.....	53,285.08	58,301.03	(5,015.95)
Totals	$543,426.53	$264,397.17	$864,505.53	$430,230.31	$434,275.22	$578,194.96	$245,908.57	$877,388.61	$449,734.20	$427,654.41

	All Indirect Expenses		All Indirect Expenses	
Departments				
Administrative & Engineering	$96,060.00		$66,409.82	
Traffic	24,499.94		24,282.50	
Maintenance	25,386.24		29,386.29	
Port Promotion & Operations	16,573.46		16,134.02	
Totals	$162,519.64		$136,212.63	
Less Charges to Additions & Betterments as Overhead	30,970.55		31,306.35	
Indirect Expenses to Operations		$131,549.09		$104,906.28
Net Excess of Income over Expenses		$302,726.13		$322,748.13

*Detail of Leased Facilities & Miscellaneous Rents

	July 1st to June 30th Fiscal Year 1939–1940			July 1st to June 30th Fiscal Year 1938–1939		
	Tonnage Revenue	Rents	Total Income	Tonnage Revenue	Rents	Total Income
Inland Waterways	$5,702.17	$4,529.76	$10,231.93	$4,973.97	$4,529.76	$9,503.73
Miscellaneous Rents, etc.	3,427.40	79,258.18	82,685.58	4,313.27	67,233.14	71,546.41
Albers Bros. Milling Co.	3,412.40	13,000.00	16,412.40	559.25	19,000.00	19,559.25
Howard Wharves	14,170.70	.....	14,170.70	12,897.10	.....	12,897.10
Howard Quay Wall	14,273.10	1,200.00	15,473.10	16,693.26	1,200.00	17,893.26
E. K. Wood Lumber Co.	2,016.92	3,800.00	5,816.92	.....	.....	.....
Totals	$43,002.69	$101,787.94	$144,790.63	$39,436.85	$91,962.90	$131,399.75

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[fol. 2522]

Port of Oakland

Harbor Maint. & Imp, Fund #226
Balance Sheet—June 30th, 1940

ASSETS:		Detail	Total
Fixed Assets			
Land		$2,565,210.30	
Buildings, Structures & Improvements	$2,763,707.65		
Less Res. for Depr. B. S. & I.	$270,652.85		
Less Res. for Redredging	144,357.60	415,010.45	2,348,697.20
Improvements Under Construction			44,437.08
Equipment	319,956.61		
Less Res. for Depr. of Equipment	129,928.37	190,028.24	
			$5,148,372.82
Current Assets			
Harbor Maintenance & Imp. Fund #226		240,715.16	
Cash on Hand			
Port Revolving Fund	$15,000.00		
Petty Cash Fund	250.00	15,250.00	
		255,965.16	
Accounts Receivable		90,740.58	
			$346,705.74
Deferred Charges			
Stores a/c Materials & Supplies on Hand		$1,020.22	
Prepaid Insurance		19,798.24	
Unabsorbed Contractual Charges		7,435.17	
Merritt Estate Claim		4,891.67	
Undistributed Pay Rolls		36,596.20	$69,741.50
			$5,564,820.06

LIABILITIES:		Detail	Total
Current Liabilities			
Contract Retentions		$12,326.84	
Advances from Port Replacement & Imp. Fund #220		50,000.00	$62,326.84
Deferred Credits			
Contracted Liabilities			
Albers Bros. Milling Co.		23,267.17	
Albert C. Moe		586.27	23,853.44
Surplus			
At Beginning of Period	$5,465,714.76		
Less Prior Years' Adjustments	4,455.55		
		5,461,259.21	
Plus Income for Period		303,415.28	
		$5,764,674.49	
Less: Res. for Depr. Bldgs., Structures & Imps.	$270,652.85		
Less Res. for Depr. Equipment	15,381.86	286,034.71	$5,478,639.78
			$5,564,820.06

(Here follow 3 photolithographs, side folios 2523–2525)

EXHIBIT No. 126a

EXPENSES FISCAL YEAR 1939-40

	TOTAL	OUTER HARBOR	GROVE STREET	9TH AVE.
Personal Service				
1. Administrative	$ 10,027.54	$ 3,880.00	$ 3,622.54	$ 2,525.00
5. Traffic & Operating	13,605.00	7,083.66	5,084.34	1,497.00
6. Clerical	46,253.60	33,798.96	8,796.63	3,658.01
7. Dock Supervision	2,656.27	2,656.27		
8. Car & Truck Work	45,217.73	39,039.62	6,178.11	
9. Receiving & Delivering	70,825.28	50,073.45	20,751.83	
10. Recoopering	6,145.23	5,321.68	823.55	
11. Handling Lines	5,248.20	3,714.15	1,534.05	
12. Watching	24,404.96	17,986.87	4,500.62	1,917.47
13. Sweeping & Cleaning	9,343.04	4,507.34	3,333.39	1,502.31
14. Transferring & Piling	19,608.97	18,924.17	684.80	
15. Weighing	1,156.56	1,127.96	28.60	
16. Stenciling	9,856.52	9,832.73	23.79	
17. Miscellaneous Labor	986.91	693.98	219.95	72.98
18. Switching - Tractor Oper.	17.18	17.18		
19. Strapping	253.42	253.42		
20. Rental Equipt. Operation	357.97	108.57	244.22	5.18
23. Sampling	379.27	379.27		
24. Supervising	681.12			681.12
25. Side Tracking	4,048.87			4,048.87
26. Lumber Checking	3,008.88			3,008.88
Subtotal	$274,082.52	$199,339.88	$ 55,886.42	$ 18,916.82
Overhead	54,079.19	38,004.34	11,032.27	982.58
Total	$328,161.71	$237,343.62	$ 66,918.69	$ 23,899.40
Supplies & Materials				
1. Office Supplies	$ 1,630.54	$ 1,534.39	$ 87.85	$ 8.30
2. Sundry Materials	505.68	177.08	143.90	184.70
3. General Supplies	882.91	636.12	184.24	62.55
4. Small Tool Replac't.	8.40	8.40		
5. Gas & Oil - Tractor Operation	1,586.75	923.91	187.88	474.96
9. Materials (Recooperage)	1,690.52	1,637.63	52.89	
10. Signs	21.83	14.68	7.15	
11. Janitor Supplies	670.04	274.33	344.76	50.95
Subtotal	$ 6,996.67	$ 5,206.54	$ 1,008.67	$ 781.46
Overhead	6,782.89	4,704.18	1,232.21	846.50
Total	$ 13,779.56	$ 9,910.72	$ 2,240.88	$ 1,627.96
Light, Power, Heat & Water				
1. Light	$ 5,423.75	$ 3,441.40	$ 1,245.42	$ 736.93
2. Power	1,726.24	1,692.64	9.60	24.00
3. Heat	446.48	88.56	405.19	63.85
4. Water	4,218.44	2,192.79	1,051.66	973.99
Subtotal	$ 11,814.91	$ 7,304.27	$ 2,711.87	$ 1,798.77
Overhead	15.92	8.78	3.70	3.44
Total	$ 11,830.83	$ 7,313.05	$ 2,715.57	$ 1,802.21

[fol. 2526] EXHIBIT No. 1261B

Port of Oakland

Construction Costs of Structures

Outer Harbor Terminal		
14th Street Wharf, Gen'l	$646.08	
14th Street Wharf, Substructure	332,948.34	
14th Street Wharf, Deck Paving	30,190.30	
14th Street Wharf, Paving	198,477.90	
Substructure—Sprinkler System	14,035.53	
Superstructure	124,597.39	
Superstructure—Sprinkler System	19,129.34	
Superstructure—Electric Wiring	7,229.25	
Paving Prior to July 1, 1927	3,378.87	
Railroad Tracks	143,054.37	
Fresh Water Supply System—Well	9,238.76	
Sewer System	20,621.25	
Bulkhead—foot of 11th St.	13,912.91	
14th St. Wharf Extension—Substructure	224,932.24	
14th St. Wharf Extension—Deck Paving	3,283.98	
14th St. Wharf Extension—Superstr.	175,217.26	
14th St. Wharf Extension—Elect. Wiring	10,491.55	
14th St. Wharf Extension—Sprinkler	18,977.97	
Gravity Tank and Tower	9,004.41	
Extension Shed #2 Substructure	199,199.52	
Extension Shed #2 Superstructure	65,804.49	
Extension Shed #2 Electric Wiring	4,062.11	
Extension Shed #2 Sprinkler	9,901.93	
Substructure 301' Open Wharf Extension	172,536.57	
Substructure 504' Wharf St. Extension	262,137.32	
270' Extension to Shed	67,226.66	
270' Extension to Shed Sprinkler	5,454.44	
270' Extension to Shed Elect. Wiring	2,859.77	
		2,148,550.51
Terminal Building "C"		
General Construction	240,839.26	
Sprinklers	9,799.51	
Electric Wiring	4,751.76	
		255,390.53
Seventh St. Unit		
Superstructure	67,230.89	
Substructure	244,384.68	
		311,615.57
Total Outer Harbor Units		2,715,556.61

[fol. 2527]

Ninth Avenue Terminal		
General	1,113.74	
Substructure	961,554.32	
Substructure Sprinklers	5,904.69	
Superstructure	118,331.70	
Superstructure Sprinklers	25,948.86	
Electric Wiring	6,180.01	
Railroad Tracks	48,190.83	
Roadways (not incl. 5th to 9th Ave.)	41,957.07	
Fences	432.38	
530' Extension Blkhd. & Wall	23,357.56	
530' Extension Substructure	106,035.80	
530' Extension Roadways in rear	15,971.08	
Extension to Apron Wharf	128,178.62	
Extension to Apron Wharf Sprinkler	33,716.57	
Extension to Apron Wharf Paving	9,481.64	
Total Ninth Avenue Terminal		1,526,351.87

Grove Street Pier		
General	2,156.26	
Substructure	641,089.60	
Substructure Sprinkler	6,262.25	
Superstructure	335,841.26	
Superstructure Sprinkler	41,957.19	
Deck Paving	39,429.87	
Electric Wiring	15,149.06	
Total Grove Street Pier		1,081,885.49

[fol. 2528] Maintenance Expense
7/1/39 to 6/30/40

Outer Harbor Terminal		
C1 Substructure & Railway Tracks (on Apron Wharf)	2,079 97	
C2 Superstructure, Plumbing, Wiring & Sprinklers	1,220 06	
C3 Streets & Roads in Pier Area	1,449 24	
C5 Sounding & Dredging	20,815 44	
C6 Office Furniture & Fixtures	226 05	
C9 Water Tower & Tank	246 67	
C10 Railway Tracks (Depressed)	231 16	
C15 Dolphin & Lights	14 02	
C17 Mtce. Automotive Equip. & Frt. Handling Machy.	2,543 19	
C18 Fences	8 96	
		28,834 76
Terminal Building "C"		
Superstructure including Plumbing, Sprinkler, Heating System, etc.	221 02	
Freight Elevators	120 58	
Railway Tracks (Serving Building)	80	
		342 40
Seventh St. Unit		
C19 Seventh St. Units—Superstructure	1,070 18	
C19a Seventh St. Units—Oil Pier	1 73	
		1,071 91
Total Maintenance Cost on Outer Harbor Units		30,249 07

[fol. 2529] Maintenance Costs
7/1/39 to 6/30/40

Ninth Ave. Pier		
Substructure, incl. Rwy. Tracks (On Apron Wharf)	58.79	
Superstructure, incl. Wiring, Plumbing, Sprinklers, Heating & Fire System	1,052.31	
Roadways south of S. P. tracks not incl. 5th to 9th Ave.	1,074.57	
Office Furniture & Fixtures	.72	
Rwy. Tracks serving Pier & Warehouse	138.19	
Sounding & Dredging	1,864.55	
Drainage & Water Supply System	256.77	
Mtce. Automotive & Freight Handling Equip't	311.92	
Fences	.87	
Steam Loco Crane	927.99	
		5,686.68
Grove Street Pier		
Substructure incl. Rwy. Tracks (On Apron Wharf)	394.79	
Quay Wall Area	842.59	
Superstructure incl. Wiring, Plumbing, Sprinklers, etc.	1,134.27	
Sounding & Dredging	3,910.68	
Office Furniture & Fixtures	42.93	
Heating Plant Mtce.	64.00	
Automotive & Frt. Handling Machinery	625.99	
		7,015.25

[fol. 2530] Recapitulation of Construction Costs and Maintenance Charges

Construction Costs to June 30, 1940		
Ninth Avenue Terminal	1,526,354.87	
Terminal Building "C"	255,390.53	
Grove Street Terminal	1,081,885.49	
Outer Harbor Terminal	2,148,550.51	
Seventh St. Unit	311,615.57	
		5,323,796.97

Note: No land values are included in these costs.

Maintenance Costs—July 1, 1939 to June 30th, 1940		
Ninth Avenue Terminal (Dock Only)	5,686.68	
Terminal Building "C"	342.40	
Grove Street Terminal (Dock Only)	7,015.25	
Outer Harbor Terminal	28,834.76	
Seventh St. Unit	1,071.91	
		42,951.00

10/5/40
PC

(Here follow 3 photolithographs, side folios 2531-2533)

EXHIBIT No. 127

BOARD OF PORT COMMISSIONERS
OF THE
PORT OF OAKLAND
GROVE ST. PIER
OAKLAND, CALIFORNIA

COMMISSIONERS
JAMES J. McELROY
PRESIDENT
EUGENE W. ROLAND
VICE-PRESIDENT
DR. GEORGE C. PARDEE
VICE-PRESIDENT
CLAIRE V. GOODWIN
EDWARD J. SMITH

CABLE ADDRESS: "OAKPORT"

1937

A. H. ABEL
PORT MANAGER
CHIEF ENGINEER AND
SECRETARY

[redacted]

CHARLES A. BEARDSLEY
ATTORNEY

October 5 1940

Mr. Guy M. Carlon
U. S. Maritime Commission
Empire Hotel
San Francisco, California

Dear Sir:

As requested by you, there is presented herewith the detailed explanation of allocation of Port of Oakland Expense Accounts.

EXPENSE DISTRIBUTION MEMORANDUM

The following indicates insofar as possible the distribution as Direct or Indirect (Overhead) Expense of the detailed breakdown of the eight divisions of expenses as carried in the municipal accounting records.

In explanation of Indirect (Overhead) charges as made to operations on the Port records, this item concerns only those departments: Administrative and Engineering, Traffic and Operating, General Waterfront (Maintenance), and Port Promotion, and before the expenses of these departments can be allocated to Operations the Additions and Betterments expenditures for any given period must first receive its proportion of this expense, the balance then being distributed to the Operations including the Airport.

Any expense of the terminals such as Superintendence, Clerical, etc. which occurs at the operated terminal is considered as a Direct Expense to that terminal, but would be considered as an Overhead against cargo movement should such a breakdown be attempted.

PERSONAL SERVICE

Accounts charged direct to Operating Expense:

7. Dock Supervision
8. Car & Truck Work
9. Receiving & Delivering
10. Reconsigning
11. Handling Lines
12. Watching
13. Transferring & Piling
15. Weighing
16. Stenciling
17. Miscellaneous Labor
18. Switching - Tractor Oper.

2531

12401

1005

PERSONAL SERVICE (Continued)

19. Stripping
20. Rental Equipt. Operation
23. Sampling
24. Supervising
25. Side Trucking
26. Lumber Checking

Accounts which are charged as both Direct and as Overhead Expense depending on department where the expense originated:

1. Administrative and Superintendence
6. Clerical
13. Sweeping & Cleaning

Accounts that are charged as Overhead only:

5. Traffic & Operating

SUPPLIES & MATERIALS

Accounts charged direct to Operating Expense:

5. Gas & Oil - Tractor Operation
9. Materials (Reconsperage)

Accounts which are charged as both Direct and as Overhead Expense depending on department where the expense originated:

All other accounts except the two above mentioned.

LIGHT, POWER, HEAT & WATER

Accounts which are charged as both Direct and as Overhead Expense depending on department where the expense originated:

All of these accounts.

TRANSPORTATION

Accounts which are charged as both Direct and as Overhead Expense depending on department where the expense originated:

All of these accounts.

INSURANCE & BONDS

Accounts which are charged as both Direct and as Overhead Expense depending on department where the expense originated:

All of these accounts.

12108

1337

COMMUNICATIONS

Accounts which are charged as both Direct and as Overhead Expense depending on department where the expense originated:

All of these accounts.

OTHER EXPENSES

Accounts charged direct to Operating Expense:

6. Abscryptions
8. O. S. & D. Claims

Accounts which are charged as both Direct and as Overhead Expense depending on department where the expense originated:

All other accounts except the two above noted.

MAINTENANCE

Accounts which are charged as both Direct and as Overhead Expense depending on department where the expense originated:

All of these accounts.

Right mention in reference to distribution of Maintenance Expense that every item of Buildings and Equipment on which maintenance work may be performed is set up on a work order to which the maintenance charges as accrued are charged direct, and those maintenance work orders which cover Equipment or Buildings in connection with Operations are charged as a Direct Expense to that particularly operated terminal.

Very truly yours,

P. N. Roberts

CHIEF POST ACCOUNTANT

HER:HMC

[fol. 2534] EXHIBIT No. 128

October 5, 1940.

Port of Oakland—Unit Costs of Pier and Wharf Construction

Terminal	Cost of timber apron wharf with two tracks per sq. ft.	Cost of concrete substructure of wharf on concrete piles per sq. ft.	Cost of substructure of wharf on fill including bulkhead, wall and rear retaining wall per sq. ft.	Cost of Transit Shed per sq. ft.
Outer Harbor...	$3.20	$2.15	$0.65	$4.59
Grove Street...	3.37	2.08	....	2.11
		2.43*		
9th Avenue.....	3.20	2.20	....	1.64
		2.45*		

* Including rock dyke.

EXHIBIT No. 129

Port of Oakland

EXPENSE ACCOUNTS

A--PERSONAL SERVICE
1. Administrative & Superintendence
2. Engineering
3. Legal
4. Advertising & Publicity
5. Traffic & Operating
6. Clerical
7. Dock Supervision
8. Car & Truck Work (Trucking in Yard)
9. Receiving & Delivering (Checking)
10. Recoopering
11. Handling Lines
12. Watching
13. Sweeping & Cleaning
14. Transferring & Piling
15. Weighing
16. Stenciling
17. Miscellaneous Labor
18. Switching (Tractor Operation)
19. Strapping
20. Operation of Equipment (Rented) Labor
21. Vacations & Leave of Absence
23. Sampling
24. Supervising (under)
25. Sidetracking
26. Lumber Checking

B--SUPPLIES & MATERIAL
1. Office Supplies
2. Sundry Materials
3. General Supplies
4. Small Tool Replacement
5. Gas & Oil (Tractor Operation)
6. Board Letters
7. Sailing Schedules
8. Compass
9. Materials (Strapping & Recoopering Matl.)
10. Signs
11. Janitor Supplies
15. Miscellaneous

C--LIGHT, POWER, HEAT & WATER
1. Light
2. Power
3. Heat
4. Water
15. Miscellaneous

D--TRANSPORTATION
1. Railroad & Other Fares
2. Room & Meals
3. Automobile Mileage
4. Gas & Oil (Auto Operation)
5. Express & Parcel Post
6. Garage Service
7. Entertaining Shippers
15. Miscellaneous

E--INSURANCE & INSPECTION
1. Fire Insurance
2. Public Liab. & Property Damage Except Automobile
3. Auto Insurance, All Kinds
4. Personal Bonds
5. Contractors' Bonds
6. Contractors' Contingent Liability
7. Inspection
8. A.D.T. Service
9. Compensation
10. Hospitalization
15. Miscellaneous

F--COMMUNICATION
1. Telephone & Telegraph
2. Postage
15. Miscellaneous

G--OTHER EXPENSES
1. Office Rent
2. Equipment Rent
3. All Advertising
4. Blue Prints & Maps
5. Memberships, Dues & Subscriptions
6. Absorptions
8. Claims O.S & D.
9. Dockage & Tolls Refunded (Fund 224)
9. Collection Expense
10. Unloading & Loading
11. Auditing & Special Examinations
12. Demurrage
13. Photographs
14. Legal Expense (Printing, Etc.)
15. Miscellaneous
16. Weighing
17. Janitor Service
18. Hiring Hall Expense
20. Retirement Fund

H--MAINTENANCE
1. Personal Service
2. Sundry Materials
3. General Supplies (Inc. Oil for Lights)
4. Auto & Tractor Tires
5. Equipment Rental
6. Outside Repairs
7. Gas used in Tractors
8. Fire Extinguishers
9. Contracts
10. Dredging
15. Miscellaneous

DEPARTMENTS

No. 1 - Administrative & Engineering
" 2 - Traffic & Operating
" 3 - General Waterfront
" 6 - Airport
" 7 - Additions & Betterments
" 9 - Port Promotion & Operation

No. 8 - Cargo Facilities:-
- 8-1 - Livingston & Dennison St. Piers
- 8-2 - Ninth Avenue Terminal
- 8-3 - Outer Harbor Terminal
- 8-4 - Grove & Market St. Terminals
- 8-5 - Rental & Leased Facilities
- 8-6 - Sunset Leased Wharf
- 8-7 - Howard Wharves
- 8-8 - Howard Quay Wall
- 8-10 - Terminal Building "C"

BEFORE THE U. S. MARITIME COMMISSION
DOCKET NO. 555
EXHIBIT NO. 129
WITNESS —
E.E. FISHER & ASSOCIATES INC.
OFFICIAL REPORTERS
BY Conkling

EXHIBIT No. 130 WITNESS Ventre

DETERMINATION OF WHARF DEMURRAGE COST OF HOWARD TERMINAL

BASED ON THE FORMULA OF

FORD K. EDWARDS (EXHIBIT 65)

SUMMARY OF
TOTAL COSTS AND UNIT COSTS FOR EACH TARIFF SERVICE PLUS A COMPARISON WITH THE CORRESPONDING REVENUES
(Based on Traffic Handled and Expenses Incurred During the Accounting Period)

Summary Schedule
Sheet 1 of 2 sheets

Line No.	TARIFF SERVICES (a)	COSTS FROM (b)	ANNUAL COST Total (c)	ANNUAL COST Per Ton 1/ (d)	ANNUAL REVENUES Total (e)	ANNUAL REVENUES Per Ton 1/ (f)	Line No.
	I TERMINAL SERVICES						
	Dockage						
1	Total Annual Cost	Sched. B, Col. (e), line 86		XXX		XXX	1
2	Cost per "12-hour berth occupancy"	Sched. B, Col. (e), line 87		XXX		XXX	2
	Tolls						
3	a. Total-All Cargo	Sched. C, Col. (c), lines 37 & 39					3
4	b. Cargo Loaded or Discharged by Pipe Line	Sched. C, Cols. (e) & (f), line 37					4
5	c. Bulk Cargo Handled Direct to/from Rail Cars	Sched. C, Cols. (g) & (h), line 37					5
6	d. General Cargo	Sched. C, Cols. (i) & (j), line 37					6
	Service Charges (Clerking Cargo)						
7	a. Total-All Cargo	Sched. D, Col. (c), lines 34 & 36					7
8	b. Cargo Loaded or Discharged by Pipe Line	Sched. D, Cols. (e) & (f), line 34					8
9	c. Bulk Cargo Handled Direct to/from Rail Cars	Sched. D, Cols. (g) & (h), line 34					9
10	d. General Cargo Handled Direct to/from Rail Cars	Sched. D, Cols. (i) & (j), line 34					10
11	e. General Cargo Moving Through Sheds	Sched. D, Cols. (k) & (l), line 34					11
✓	**Wharf Demurrage**						
12	a. Total-All Cargo	Sched. E, Col. (c), line 42	45,033.49	XXX	31,359.46	XXX	12
	b. Fixed Costs Per Ton (average)						
13	1. Total-Excluding High Piling	Sched. E, Col. (i), line 40	XXX	.4893	XXX	XXX	13
14	2. High Piling Costs (average)	Sched. E, Col. (c), line 46	XXX	.3725	XXX	XXX	14
	c. Variable Costs						
15	1. Overhead per ton per 30 days	Sched. E, Col. (c), line 40	XXX	.1528 2/	XXX	XXX	15
16	2. Floor space costs per sq. ft. per 30 days	Sched. E, Col. (m), line 40	XXX	.0319 3/	XXX	XXX	16
	Miscellaneous Terminal Services						
17	Car Loading	Sched. F, Col. (c), lines 48 & 49					17
18	Car Unloading	Sched. F, Col. (f), lines 48 & 49					18
19	Weighing	Sched. F, Col. (g), lines 48 & 49					19
20	Stencilling	Sched. F, Col. (h), lines 48 & 49		/hr.		/hr.	20
21	Recoopering	Sched. F, Col. (i), lines 48 & 49		/hr.		/hr.	21
22	Labor Sold (Cost Plus - Hourly Basis)	Sched. F, Col. (j), lines 48 & 49		/hr.		/hr.	22
23	Handling Lines	Sched. F, Col. (k), lines 48 & 49		/hr.		/hr.	23
24	Other	Sched. F, Col. (l), lines 48 & 49		/hr.		/hr.	24
25	Total Miscellaneous			XXX		XXX	25
	Rentals			Per Sq. Ft. Per 30 Days		Per Sq. Ft. Per 30 Days	
26	Steamship and Other Office Rentals 4/	Sched. B, Col. (j), line 92					26
27	Pier Rentals 5/	-	XXX	XXX		XXX	27
28	Land Rentals	6/					28
29	Total Rentals	-		XXX		XXX	29
30	**Total-Terminal Services** Sum of lines 1, 3, 7, 12, 25, and 29)			XXX		XXX	30

SUMMARY OF

TOTAL COSTS AND UNIT COSTS FOR EACH TARIFF SERVICE PLUS A COMPARISON WITH THE CORRESPONDING REVENUES

(Based on Traffic Handled and Expenses Incurred During the Accounting Period)

Summary Schedule
Sheet 2 of 2 sheets

Line No.	TARIFF SERVICES (a)	COSTS FROM (b)	ANNUAL COST Total (c)	ANNUAL COST Per Ton 1/ (d)	ANNUAL REVENUE Total (e)	ANNUAL REVENUE Per Ton 1/ (f)	Line No.
	II NON-TERMINAL OPERATIONS 7/ (May be Omitted)						
31	Warehousing (Domestic)	Sched. B, Col. (1), line 59		xxx		xxx	31
32	Producing Power Sold	Sched. B, Col. (1), line 60		xxx		xxx	32
33	Grain Elevators	Sched. B, Col. (1), line 61		xxx		xxx	33
34	Stevedoring	Sched. B, Col. (1), line 62		xxx		xxx	34
35	Terminal Railroad Operations	Sched. B, Col. (1), line 63		xxx		xxx	35
36	Other Operations	Sched. B, Col. (1), line 64		xxx		xxx	36
37	Total--Non-Terminal Operations	-		xxx		xxx	37
38	III GRAND TOTAL-REVENUES (Lines 30 and 37)	-					38

Use: This schedule serves to summarize the results developed herein. The degree to which the items of expense are broken down by classes of tonnage will depend upon the purpose of the study. In the study made by the Railroad Commission of California, Case No. 4090, it was found necessary to carry out the complete breakdown for rate making purposes.

This formula assumes that the carrying charges upon waterways and piers and wharf structures are fundamentally assignable on the one hand to the vessel in the form of dockage and, on the other hand, to the cargo in the form of tolls (or wharf demurrage if held beyond the free time). This study is not concerned with the fact that some part of the costs assigned herein to dockage or to tolls may ultimately be embraced in pier rentals, service charges, etc., which the port or terminal assesses. This latter is a problem of rate making. The costs, when once found, upon the basis set forth herein can readily be converted into these other units to fit the pricing system of each individual port or terminal. After such conversion, however, the comparability of the costs as between different ports or terminals is, of course, destroyed.

Costs are per ton except as otherwise indicated.

1/ Per ton per 30 days.

2/ Per square foot per 30 days. (Cost is after adjustment for aisle space, etc.)

3/ Costs per square foot per month equal cost per square foot from Schedule B, column (j), line 92, divided by 12. Multiply by the square feet of rental areas to obtain total cost.

4/ No costs are shown for Pier Rentals inasmuch as all pier and waterway expenses involved (except those for office rentals) have been charged, first, against the vessel in the form of dockage, and second, against the cargo in the form of tolls and wharf demurrage. If pier rentals are also charged against the steamship lines, such revenues constitute, in effect, added dockage revenues. They may also permit of the tariff charges in the form of dockage against the vessel and even of tolls against the cargo being lower than would otherwise be the case.

5/ Develop costs from Schedule B, column (1), line 86, which shows total annual cost for carrying land areas not directly used in cargo handling.

6/ The inclusion of these items is not pertinent to a terminal cost study nor to uniform cost accounting. They are shown here for the reason that most ports and terminals engage in some operations which are not strictly terminal services and their inclusion here permits of a full accounting of the grand total revenues and expenses, if such is desired.

CARRYING CHARGES ON WATERWAYS, STRUCTURES, AND OTHER PLANT FACILITIES

SEPARATED AS BETWEEN WATERWAYS, APRONS, SHEDS, AND OTHER AREAS AND FACILITIES

Schedule A
Sheet 1 of 1

Acct. No. (a)	ITEM (b)	Expenses (c)	APPORTIONMENT FACTORS 1/ (d)	Water-ways (e)	APRONS Unit No. 1 (f)	APRONS Unit No. 2 (g)	TRANSIT SHEDS 2/ Unit No. 1 (h)	TRANSIT SHEDS 2/ Unit No. 2 (i)	Trackage Facilities 3/ (j)	Roadway and Truck Areas 4/ (k)	Other Areas and Facilities 4/ (l)	Line No.
	I CARRYING CHARGES - WATERWAYS & STRUCTURES											
101	Superintendence		Accts. 101, 105, 106 and 110									1
102	Engineering		Acct. 101									2
103	Dredging		Direct		XXX	XXX	XXX	XXX	XXX	XXX	XXX	3
104	Maint. Wharves & Substructures		Direct 5/						XXX	XXX		4
105	Depr. Wharves & Substructures		Direct 5/						XXX	XXX		5
106	Maint. Transit Sheds		Direct	XXX	XXX	XXX			XXX	XXX		6
107	Depr. Transit Sheds		Direct	XXX	XXX	XXX			XXX	XXX		7
108	Maint. Trackage Facilities		Direct	XXX	XXX	XXX	XXX	XXX		XXX	XXX	8
109	Depr. Trackage Facilities		Direct	XXX	XXX	XXX	XXX	XXX		XXX	XXX	9
110	Maint. Roadway & Truck Areas		Direct	XXX	XXX	XXX	XXX	XXX	XXX		XXX	10
111	Depr. Roadway & Truck Areas		Direct	XXX	XXX	XXX	XXX	XXX	XXX		XXX	11
112	Insurance on Structures 6/		Direct, or Coverage	XXX					XXX	XXX		12
113	Maint. Fire Equipment		Floor Area of Structures	XXX					XXX	XXX		13
114	Depr. Fire Equipment		Floor Area of Structures	XXX					XXX	XXX		14
115	Stationery & Printing		Acct. 101									15
116-1	Taxes on Structures & Facilities		Assessed Val.or Flr Area 7/	XXX								16
117-1	Rentals Paid on Struct. & Fac.		Direct, or Floor Area	XXX								17
	Return on Struct. & Fac. at ____%		Value, or Floor Area	XXX								18
	Total Carrying Chgs.-Structures		-									19
	I CARRYING CHARGES ON LAND											
116-2	Taxes on Land		Ground Area 8/									20
117-2	Rentals Paid on Land		Direct, or Ground Area									21
	Return on land at ____		Ground Area									22
	Total Carrying Chgs - Land		-									23
	GRAND TOTAL (Lines 19 and 23)		-									24

The carrying charges, as the term is here used, includes maintenance, depreciation, insurance, taxes, and a return upon the investment. While this form provides for only two wharf units, as many sheets may be added to Schedule A (and the following schedules) as are necessary to account for all wharf and pier units pertinent to the study (see columns (f) and (g), and (h) and (i), respectively). If the straight line method of depreciation is used, compute the return upon the depreciated value of the property used and useful. If the sinking fund method of depreciation is used, compute the return upon the original cost of the property used and useful, but before depreciation.

Apportionment factors on this and subsequent schedules should be used only in the absence of data permitting direct assignment. The distribution is intended to reflect as nearly as practicable the expense properly chargeable to each facility listed.

The term "shed" is here intended to mean the superstructure plus that portion of the substructure which it covers. The remainder is assignable to aprons. A further subdivision of columns (h) and (i) to reflect the substructure and superstructure separately may be made, if desired, to facilitate the accumulation of the costs. The values should be combined for treatment in Schedule B.

3/ Do not include trackage or roadway facilities which are an integral part of the wharf structures. In such case the charges are assigned to the structure.

4/ Embraces all remaining areas used and useful in the provision of the port or terminal service such as fire stations, storage areas, shops, etc., but which are not directly revenue producing.

5/ Assign expense for fender line to waterways (for subsequent inclusion in dockage charges). Estimate on best basis available. Assign remaining expenses for wharves and substructure direct to apron and transit-shed areas, respectively. If direct distribution not available, allocate on basis of floor area in each (or per coverage in case of insurance).

6/ For insurance on cargo (in transit or demurrage) see Schedule B.

7/ Allocate in proportion to the assessed valuation of each structure. Where taxes are assignable to full units including substructure and shed, assign taxes to each on basis of original cost and allocate taxes on substructure to apron on basis of area.

8/ Allocate in proportion to the area upon which each facility rests, waterways, structures, roadways, etc.

SEPARATION OF EXPENSES BETWEEN DOCKAGE, TOLLS, SERVICE CHARGES, WHARF DEMURRAGE, ETC.

Schedule B
Sheet 1 of 5 sheets

Line No.	Acct. No. (a)	ITEM (b)	Expenses (c)	APPORTIONMENT FACTORS 1/ (d)	Dockage 2/ (e)	Tolls 3/ (f)	Service Charges 4/ (g)	Wharf Demurrage 5/ (h)	Misc. Terminal Services 6/ (i)	OFFICES AND OTHER AREAS 7/ Shed Space (j)	OFFICES AND OTHER AREAS 7/ Land Areas (k)	Non-Terminal Operations 8/ (l)	Line No.
		I CARRYING CHARGES - WATERWAYS & STRUCTURES (from Sched. A line 19)											
		Waterways (Col. e)		Direct 9/		xxx	xxx	xxx	xxx	xxx	xxx		1
		Apron - Unit No. 1 (Col. f)		Use made 9/			xxx	xxx	xxx	xxx	xxx		2
		Apron - Unit No. 2 (Col. g)		Use made 9/			xxx	xxx	xxx	xxx	xxx		3
		Shed - Unit No. 1 (Col. h)		Use made 9/			xxx	793.36			xxx	xxx	4
		Shed - Unit No. 2 (Col. i)		Use made 9/			xxx	-			xxx	xxx	5
		Trackage Facilities (Col. j)		Tolls 100% 9/	xxx		xxx	xxx	xxx	xxx	xxx	xxx	6
		Roadway Areas (Col. k)		Tolls 100% 9/	xxx		xxx	xxx	xxx	xxx	xxx	xxx	7
		Other Facilities (Col. l)		Direct 10/			xxx	175.05					8
		Total Carrying Charges - Waterways & Structures (Lines 1-8 Incl.)		-			xxx	810.41					9
		I CARRYING CHARGES - LAND (from Sched. A line 24)											
		Land - Waterways (Col. e)		Direct 9/		xxx	xxx	xxx	xxx	xxx	xxx		10
		Land - Apron Unit No. 1 (col. f)		Use made 9/			xxx	xxx	xxx	xxx	xxx		11
		Land - Apron Unit No. 2 (Col. g)		Use made 9/			xxx	xxx	xxx	xxx	xxx		12
		Land - Shed Unit No. 1 (col. h)		Use made 9/			xxx	4512.74			xxx	xxx	13
		Land - Shed Unit No. 2 (col. i)		Use made 9/			xxx	-			xxx	xxx	14
		Land - Trackage Facilities (col. j)		Tolls 100% 9/	xxx		xxx	xxx	xxx	xxx	xxx	xxx	15
		Land - Road Areas (col. k)		Tolls 100% 9/	xxx		xxx	xxx	xxx	xxx	xxx	xxx	16
		Land - Other Facilities (col. l)		Direct 10/			xxx	17.58					17
		Total Charges - Land, (Lines 10-17, inclusive)		-			xxx	4532.32					18
		II DOCK OPERATION											
151		Superintendence		Accts. 152-182, incl.				180.00					19
		(Clerking)											
152-1		Checking Cargo (to/from vessel) 11/		Direct	xxx	xxx		xxx	xxx	xxx	xxx	xxx	20
152-2		Checking Cargo (to/from shipper) 11/		Direct	xxx	xxx		xxx	xxx	xxx	xxx	xxx	21
152-3		Checking Cargo (to/from demurrage) 12/		Direct	xxx	xxx	xxx	43.66.53	xxx	xxx	xxx	xxx	22
152-4		Checking (Acct. car loading)		Direct 13/	xxx	xxx		-		xxx	xxx	xxx	23
152-5		Checking (Acct. Car Unloading)		Direct 13/	xxx	xxx		-		xxx	xxx	xxx	24
152-6		Checking - Other		Direct	xxx	xxx		-		xxx	xxx	xxx	25
153		Making out Ship's Papers 14/		Direct	xxx	xxx		xxx	xxx	xxx	xxx	xxx	26
		(Dock Labor)											
171		Assembling Cargo for Vessel's acct.		Direct	xxx	xxx		xxx	xxx	xxx	xxx	xxx	27
172		Car loading		Direct	xxx	xxx	xxx	xxx		xxx	xxx	xxx	28
173		Car unloading		Direct	xxx	xxx	xxx	xxx		xxx	xxx	xxx	29
174		Handling to High Piling (Acct. Demurrage)		Direct	xxx	xxx	xxx	7758.31	xxx	xxx	xxx	xxx	30
175		Handling Lines		Direct	xxx	xxx	xxx	xxx		xxx	xxx	xxx	31
176		Dolphins		Direct	xxx	xxx	xxx	xxx		xxx	xxx	xxx	32
177		Stevedoring		Direct	xxx	xxx	xxx	xxx		xxx	xxx	xxx	33
179		Recoopering		Direct	xxx	xxx	xxx	xxx		xxx	xxx	xxx	34
17		Misc. Labor (for which cost plus charge assessed)		Direct	xxx	xxx	xxx	xxx		xxx	xxx	xxx	35

(See Sheets 4 and 5 for footnotes).

SEPARATION OF EXPENSES BETWEEN DOCKAGE, TOLLS, SERVICE CHARGES, WHARF DEMURRAGE, ETC.

Schedule B
Sheet 2 of 5 sheets

Acct. No.	ITEM	Expenses	APPORTIONMENT FACTORS 1/	Dockage 2/	Tolls 3/	Service Charges 4/	Wharf Demurrage 5/	Misc. Terminal Services 6/	OFFICES AND OTHER AREAS 7/ Shed Space	OFFICES AND OTHER AREAS 7/ Land Areas	Non-Terminal Operations 8/	Line No.
(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)	(j)	(k)	(l)	
	II DOCK OPERATION (Continued)											
	(Misc. Expenses)											
181	Cleaning sheds & docks		Cleaning Requirements 15/	xxx	xxx		1022.93			xxx	xxx	36
182	Watchmen		Areas 16/				2198.70					37
183	Power for dock use		Consumption	xxx	xxx		1xx.10			xxx	xxx	38
184	Power for sale		Direct	xxx	xxx	xxx	xxx	xxx	xxx	xxx		39
185	Water for dock use		Consumption	xxx	xxx		50.33			xxx	xxx	40
186	Water for sale		Direct	xxx	xxx	xxx	xxx	xxx	xxx	xxx		41
187	Claims		Direct				239.34		xxx	xxx	xxx	42
188	Car Demurrage		Direct 17/	xxx		xxx	xxx		xxx	xxx	xxx	43
189	Absorptions		18/				83.45		xxx	xxx	xxx	44
190	Insurance, Cargo		Direct	xxx	xxx		-		xxx	xxx	xxx	45
191	Insurance, Compensation		Labor allocation				313.56		xxx	xxx		46
192	Telephone		Acct. 151				660.58					47
193	Stationery & Printing		Acct. 151				276.46					48
194	Taxes, Payroll		Accts. 152-182, incl.				533.11					49
	(Dock Equipment)											
201	Car loading-Equipment (Supplies, repairs, depr.)		Direct	xxx	xxx	xxx	xxx		xxx	xxx	xxx	50
202	Weighing Equipment (Supplies, repairs, depr.)		Direct	xxx	xxx	xxx	xxx		xxx	xxx	xxx	51
203	High piling Equipment (Supplies, repairs, depr.)		Direct	xxx	xxx		1241.20	xxx	xxx	xxx	xxx	52
204	Tractors & Trailers (Supplies, repairs, depr.)		Direct	xxx	xxx		1357.53		xxx	xxx	xxx	53
X	(Return at % on Depreciated Value - Dock Equipment)											
	Car Loading Equipment		Direct	xxx	xxx	xxx	xxx		xxx	xxx	xxx	54
	Weighing Equipment		Direct	xxx	xxx	xxx	xxx		xxx	xxx	xxx	55
	High Piling Equipment		Relative Use	xxx	xxx		304.42	xxx	xxx	xxx	xxx	56
	Tractors & Trailers Equipment (including Lift Trucks)		Relative Use	xxx	xxx		261.95		xxx	xxx	xxx	57
	Total Dock Operation (Lines 19-57, inclusive)	-					20.970.48					58
	III OTHER PORT OPERATIONS											
	Warehousing		Direct	xxx	xxx	xxx	xxx	xxx	xxx	xxx		59
	Producing Power sold		Direct	xxx	xxx	xxx	xxx	xxx	xxx	xxx		60
	Grain Elevators		Direct	xxx	xxx	xxx	xxx	xxx	xxx	xxx		61
	Stevedoring		Direct	xxx	xxx	xxx	xxx	xxx	xxx	xxx		62
	Terminal Railroad Operations		Direct	xxx	xxx	xxx	xxx	xxx	xxx	xxx		63
	Other Operations		Direct	xxx	xxx	xxx	xxx	xxx	xxx	xxx		64
	Total-Other Port Operations (Lines 59-64, inclusive)	-		xxx	xxx	xxx	xxx	xxx	xxx	xxx		65

(See Sheets 4 and 5 for footnotes).

SEPARATION OF EXPENSES BETWEEN DOCKAGE, TOLLS, SERVICE CHARGES, WHARF DEMURRAGE, ETC.

Schedule B
Sheet 3 of 5 sheets

Acct. No.	ITEM	Expenses	APPORTIONMENT FACTORS 1/	Dockage 2/	Tolls 3/	Service Charges 4/	Wharf Demurrage 5/	Misc. Terminal Services 6/	OFFICES AND OTHER AREAS 7/ Shed Space	OFFICES AND OTHER AREAS 7/ Land Areas	Non-Terminal Operations 8/	Line No.
(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)	(j)	(k)	(l)	
	IV TRAFFIC EXPENSES 24/											
301	Superintendence		Lines 9, 18, 58 (65) 24/				474.24		xxx	xxx		66
302	Solicitation		Lines 9, 18, 58 (65)				2604.50		xxx	xxx		67
303	Rate Adjustment & Tariff Pub		Lines 9, 18, 58 (65)				108.41		xxx	xxx		68
304	Dues & Subscriptions		Lines 9, 18, 58 (65)				132.16		xxx	xxx		69
305	Stationery & Printing	100	Lines 9, 18, 58 (65)				219.05		xxx	xxx		70
306	Other Traffic Expense		Lines 9, 18, 58 (65)				346.46		xxx	xxx		71
	Total Traffic Expenses (Lines 66-71, inclusive)		-				3556.81		xxx	xxx		72
	V GENERAL & ADMINISTRATIVE 24/											
351	Salaries & Exp. Gen'l Officers		Lines 9, 18, 58 (65) 24/				1953.00		xxx	xxx		73
352	Salaries & Exp. Gen'l Ofc Clks		Dir., or Lines 9,18,58(65)19/				813.92		xxx	xxx		74
353	Accounting & Billing		Direct, or Acct. 351				1921.48		xxx	xxx		75
354	Gen'l Ofc Supplies & Expenses		Line 73				345.84		xxx	xxx		76
355	Legal Expenses		Lines 9, 18, 58 (65)				266.44		xxx	xxx		77
356	Pensions & Relief		Labor Distribution				472.87		xxx	xxx		78
357	Insurance, general		Direct or Lines 9,18,58(65)				229.15		xxx	xxx		79
358	Stationery & Printing		Lines 9, 18, 58 (65)				889.57		xxx	xxx		80
359	Taxes - Office Payroll		Accts. 351-352				184.41		xxx	xxx		81
360	Ofc Equipt. (Carrying Chgs) 23/		Accts. 351-352				123.83		xxx	xxx		82
	Ofc Space Costs (from line 92)		Accts. 351-352				104.36		xxx	xxx		83
	Return on Working Capital 25/		Lines 9, 58 (65)				232.40		xxx	xxx		84
	Total-General & Administrative (Lines 73-84, inclusive)		-				7537.47		xxx	xxx		85
	GRAND TOTAL - EXPENSES (Lines 9,18,58,65,72 and 85)		-				45033.49					86
	Development of Average Unit Cost 20/											
	Dockage cost per "12-hr berth occupancy" (Line 86 ÷ Line 88)		-		xxx	xxx	xxx	xxx	xxx	xxx	xxx	87
	Statistical Items											
	Vessel "12-hr berth occupancies" 21/		-		xxx	xxx	xxx	xxx	xxx	xxx	xxx	88
	Assignment of Shed Area in Square Feet											
	Unit No. 1		- Taxes, depreciation, repairs and other carrying charges were									89
	Unit No. 2		- individually computed on basis of square feet occupied by							xxx		90
	Total lines 89,90)		- main office building and were summarized on Sch. B-17				55,377					91
	Cost Per Square foot-Offices & Other Areas (Lines 9,18,36,37) ÷ Line 91 Col.(j)		-	xxx	xxx	xxx	xxx	xxx		xxx	xxx	92
	Ofc Space Costs 22/ (Area x line 92, col.(i))		-	xxx	xxx	xxx	xxx	xxx		xxx	xxx	93

(See Sheets 4 and 5 for footnotes).

SEPARATION OF EXPENSES BETWEEN DOCKAGE, TOLLS, SERVICE CHARGES, WHARF DEMURRAGE, ETC.

Apportionment factors of this and subsequent schedules should be used only in the absence of data permitting direct assignment. The distribution is intended to reflect as nearly as practicable the expense properly chargeable to each service listed.

For purposes of cost allocations herein the term dockage is defined as follows: "The charge assessed against a vessel and/or watercraft for docking at a wharf, pier, or seawall structure, or moored to a vessel so docked, or coming within a slip, channel, or basin." In other words, dockage is the charge against the vessel for the use of the wharf for purposes of loading and/or discharging its cargo. The vessel is charged with that wharf space necessary for the physical loading or discharging of its cargo. Such space extends from the fender line up to that point at which the vessel's agents (stevedores) physically take possession of or drop the cargo, (i.e., up to but not including the point of rest).

Under certain circumstances the dockage costs, as herein determined, are assessed against the vessel (in whole or in part) in the form of pier rentals or space rentals. Such rentals may increase the burden laid against the vessel and correspondingly lighten the direct burden against the cargo. The reverse may be true. The formula, as here set up, however, merely seeks to determine what the vessel and the cargo ought to pay purely from a cost of service standpoint based upon the respective use each makes of the facility. The ultimate distribution of these costs against the respective users of the service in the form of tariff charges is not a matter of concern to the cost analyst in applying this Formula.

For purposes of cost allocations herein the term tolls is defined as follows: "A toll is the charge for cargo conveyed on, over, or through a terminal facility, or loaded or discharged while the vessel is berthed at a terminal facility." In other words, the toll is the price paid by the cargo for the use of wharf facilities, i.e., sheds, roadways, trackage facilities, etc. The cargo is assumed to compensate in the form of toll for the carrying charges upon the facilities up to the point where the vessel's stevedores physically take possession of the goods for loading purposes, i.e., up to and including point of rest (but excluding areas devoted to wharf demurrage or shipside storage).

Service Charge items embrace clerical, checking and related services rendered for the account of the vessel. Private terminals may embrace items which are different from those included by the vessel operators themselves when the latter, for accounting purposes, segregate these expenses. At the private terminals on San Francisco Bay the term service charge, as defined in their tariffs, is a charge against the vessel for the rendering of the following services:

(1) Arranging berth for vessel.
(2) Arranging cargo space on wharf.
(3) Checking cargo to or from vessel as required.
(4) Receiving outbound cargo from shipper.
(5) Delivering inbound cargo to consignee.
(6) Preparing manifest or tags covering cargo loaded aboard vessel.
(7) Preparing "over," "short," and "damage" reports.
(8) Ordering cars.
(9) Giving information to shippers and consignees regarding cargo, sailing and arrival dates of vessels.
(10) Lighting wharf.

The above definition has been used for purposes of making the cost allocations herein.

5/ Wharf demurrage is defined as that charge accruing upon the cargo left in the possession of the terminal beyond the free time period. The floor space assignable to wharf demurrage (or shipside storage) is based on tests to develop the annual average areas occupied, or held available for such occupancy.

6/ Embraces car loading, car unloading, weighing, stencilling, recoopering, labor sold on cost plus basis, handling lines, etc. Charge these items with the space devoted to the performance of stencilling, recoopering, weighing, etc., and to the storage of equipment used in car loading, unloading, stencilling, weighing, etc.

7/ Embraces remaining shed or open areas used for the general offices or rented to steamship companies, stevedoring companies, outside stencilling companies, etc. Embraces only non-cargo areas.

8/ Assign to Non-Terminal Operations, column (1), any charges not assignable to the revenue producing terminal services listed. Non-terminal operations include stevedoring, terminal railway operations, etc.

9/ The apportionment of the carrying charges for the waterways, aprons, sheds and other parts of the wharf structure, must rest (from the standpoint of cost finding) upon the relative use made of such facility by the vessel on the one hand and the cargo on the other. The principles involved in such separation are too involved for reproduction here. (See Final Report in C.R.C. study, Case 4090, dated May 16, 1936, pages 41-43). The separation made will vary with the type and uses made of the individual structures. The Commission report lists five illustrations of cost separation. The results of illustration No. 5 follow as an example:

Carrying Charges (a)	Vessel Dockage (b)	CARGO Tolls (c)	CARGO Demurrage (d)	Misc. Terminal Services (e)	Offices & Rental Areas (f)	Non-Terminal Operations (g)
a. Water Areas	100%	-	-	-	-	-
b. Apron-Structure & Track	60%	40%	-	-	-	-
c. Apron-Land	87½%	12½%	-	-	-	-
d. Transit Shed, substructure, superstructure & land	12%	68%	20%	-	-	-
e. Remaining Term. Trackage & Roadways	-	100%	-	-	-	-

The above separation was based on several factors not here listed and represents an oversimplification as no charges have been made for offices and rental areas, etc. However, with the fundamental principles stated as to the portions of the facility which are properly chargeable against the vessel and the portions properly chargeable against the cargo, the breakdown for each wharf or pier is readily obtainable. In the Commission study a breakdown was developed separately for each wharf unit at each of the terminal properties subject to the investigation. It is obvious that the fundamental statement of principles for the separation of the charges between vessel and cargo are all-important.

10/ Assign to Tolls, column (f), the charges upon special facilities or areas utilized by pipe lines in the handling of bulk cargoes, including a portion of the substructure supporting the pipe lines. Assign open areas used for bulk storage to wharf demurrage, column (h).

11/ The checking is for the account of the vessel. Hence cost is included in service charge assessed against vessel.

SEPARATION OF EXPENSES BETWEEN DOCKAGE, TOLLS, SERVICE CHARGES, WHARF DEMURRAGE, ETC.

If cargo goes on wharf demurrage the vessel's responsibility is assumed to have ceased. Checking costs thereafter are for the account of the demurrage cargo and included in the demurrage costs.

Where a check is performed on car loading which serves as a count both for the vessel and for the car loading operation, distribute the costs of such check equally between service charges and car loading. Same principle holds for checking for the joint account of car loading and wharf demurrage.

Involves clerical work in making up dock manifests, dock receipts, loading lists, over, short, and damage reports, etc.

A typical distribution developed for a large wharf covered by the Commission's investigation was as follows: Service charges 65 per cent, miscellaneous services 30 per cent, demurrage 5 per cent. The cleaning occasioned by the receipt and delivery of cargo from and to shippers and by the stevedoring operations was assessed against the vessel in the form of service charges. Such distribution was based on an inspection and check of the cleaning chargeable to each service at each structure.

A typical distribution developed by the Commission study for one terminal property was as follows: Dockage 12.5 per cent, toll 27.5 per cent, service charges 30 per cent, demurrage 20 per cent, and miscellaneous services 10 per cent. Such distribution arbitrarily assumed that a given proportion (say 50 per cent) of the watchmen's service was devoted to the protection of the cargo, this to be further distributed between service charges and demurrage on the basis of the average volume (or footage) of in-transit and demurrage tonnage so protected. The remaining proportion of the watchmen's time was considered as devoted to the protection of the structures and apportioned according to the time required to make the rounds of each structure and the use to which each was charged. (See apportionments of Carrying Charges on Structures).

Charge to Car Loading and Unloading, respectively, upon basis of demurrage accrued in each. However, when unloading delays arise from lack of shed space to accommodate rail-borne cargo, charge to toll upon principle that such use of cars constitutes a temporary extension of shed space.

Absorptions of one type or another may be made by ports or terminals (or by a steamship line which operates its own terminal). The purpose is to attract cargo from which revenue may be derived through the provision of one or all of the services which the terminal offers. Allocate costs according to revenues currently received from each service, or, if rates are to be subject to significant adjustments, allocate according to distribution of all other expenses herein.

19/ Assign direct where the time of the clerical staff can be segregated through time studies over test periods. Otherwise apportion on the basis of the directly assigned charges.

20/ Average unit costs can be developed at this point in the study by dividing the appropriate total costs in the respective columns by the total service units appropriate thereto. With the exception of dockage costs, however, such unit costs are of limited use for rate making purposes without further breakdown as provided in subsequent schedules. Even in the case of dockage the average cost (applicable to the hypothetical average vessel) should probably be scaled downward for vessels of less than average net registered tonnage and scaled upward for vessels of greater than average tonnage (see rates of progression developed in C.R.C. study, Final Report, pages 52-55). If desired, the dockage costs as herein derived may be subsequently broken down into two elements for rate making purposes, namely, pier rentals and dockage (the latter being reduced to the degree that the pier rentals absorb part of the expenses). The observation is here made that for local competitive reasons approximately 75 per cent of the costs assigned to dockage at the East Bay terminals (San Francisco Bay) were subsequently added, for rate making purposes, to the service charges assessed against the vessel. This permitted the equalization of the dockage charges with those assessed at competitive ports (see above Report, pages 50, 55-56). Such subsequent treatment of dockage costs for rate making purposes does not influence the application of this formula which yields the costs entirely independent of their subsequent treatment for rate making purposes.

21/ This unit is purely arbitrary and used for purposes of illustration only. On the Pacific Coast vessels are assessed dockage on the basis of 4 hours, 12 hours, or 24 hours, depending upon the port. Dockage for fractions of a period should be counted as a full period, i.e., dockage for each 12 hours or fraction thereof constitutes one "12-hour berth occupancy." The C.R.C. study broke the periods down into 4-hour periods.

22/ State herein the area devoted to General and Administrative offices: _____ square feet.

23/ Add to Account 360 an allowance for _____% return upon the depreciated value of the office equipment. State herein the value used and amount thus added. Depreciated value $_____. Return $_____.

24/ If this overhead includes any work performed on behalf of "Non-Terminal Operations," the expenses must be distributed accordingly. Exclude charges to columns (j) and (k).

25/ State amount of working capital normally required to meet current expenses and obligations over period of _____ weeks $_____. In principle, the allocation of the return upon (i.e., cost of) such working capital should be against those services the provision of which requires such working capital.

BREAKDOWN OF WHARF DEMURRAGE COSTS INTO
(1) The Fixed Costs per Ton (i.e., Receiving and Delivery Expense), and
(2) The Variable Expense (i.e., the Floor Space Costs and Overheads, both of which vary with the Period of Storage).

Schedule 5
Sheet 1 of 2 sheets

Line No.	Acct. No.	ITEM	Expenses from Schedule B Column (h)	APPORTIONMENT FACTORS	(1) FIXED COSTS: LABOR HANDLING High Piling	LABOR HANDLING Other 1/	Checking	Non-Variable Ovh'd	Subtotal Cols. (f)+(g)+(h)	Cost/Ton Excl. High Piling 2/	(2) VARIABLE COSTS: Floor Space Costs	Initial Space Cost/sq.ft. 3/	Adj'd. Space Cost/sq.ft./20 days 4/	Variable Overhead	Ovh'd Costs/Ton/30 da. 5/
	(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)	(j)	(k)	(l)	(m)	(n)	(o)
		I CARRYING CHARGES-STRUCTURES													
1		Shed Unit No. 1		Direct	xxx	xxx	xxx	xxx	xxx	xxx				xxx	xxx
2		Shed Unit No. 2	7931.36	Direct	xxx	xxx	xxx	xxx	xxx	xxx	7931.36	.1434	.0199	xxx	xxx
3		Other Facilities	175.05	Direct	xxx	xxx	xxx	xxx	xxx	xxx	175.65	.0032	.0005	xxx	xxx
4		Total-Carrying Charges-Structures	8106.41	-	xxx	xxx	xxx	xxx	xxx	xxx	8106.41	.1466	.0204	xxx	xxx
		I CARRYING CHARGES-LAND													
5		Shed Unit No. 1		Direct	xxx	xxx	xxx	xxx	xxx	xxx				xxx	xxx
6		Shed Unit No. 2	4512.74	Direct	xxx	xxx	xxx	xxx	xxx	xxx	4512.74	.0816	.0113	xxx	xxx
7		Other Facilities	19.58	Direct	xxx	xxx	xxx	xxx	xxx	xxx	19.58	.0004	.0001	xxx	xxx
8		Total-Carrying Charges-Land	4532.32	-	xxx	xxx	xxx	xxx	xxx	xxx	4532.32	.0820	.0114	xxx	xxx
		II DOCK OPERATION			21%	15%	14%								
9	151	Superintendence	180.00	Acct. 152-182 incl.	37.80	27.00	25.20	xxx	52.20		xxx	xxx	xxx	90.00	
10	152-3	Checking (to/from Demurrage)	4366.53	Direct	xxx	xxx	4366.53	xxx	4366.53		xxx	xxx	xxx	xxx	xxx
11	152-4	Checking (Acct. Car Loading) 6/		Direct	xxx	xxx		xxx			xxx	xxx	xxx	xxx	xxx
12	152-5	Checking (Acct. Car Unloading) 6/		Direct	xxx	xxx		xxx			xxx	xxx	xxx	xxx	xxx
13	174	Handling & High Pil.(a) High Piling	3510.39	Direct	3510.39	xxx	xxx	xxx	xxx		xxx	xxx	xxx	xxx	xxx
14		(b) Other	4247.92	Direct	xxx	4247.92	xxx	xxx	4247.92		xxx	xxx	xxx	xxx	xxx
15	181	Cleaning Sheds	1027.93	Direct	xxx	xxx	xxx	xxx	xxx		xxx	xxx	xxx	1027.93	
16	182	Watchmen	2198.76	Direct	xxx	xxx	xxx	xxx	xxx		xxx	xxx	xxx	2198.76	
17	183	Power for dock use	122.10	Direct	xxx	xxx	xxx	xxx	xxx		xxx	xxx	xxx	122.10	
18	185	Water for dock use	50.33	Direct	xxx	xxx	xxx	xxx	xxx		xxx	xxx	xxx	50.33	
19	187	Claims	239.34	Direct	xxx	xxx	xxx	xxx	xxx		xxx	xxx	xxx	239.34	
20	189	Absorptions	83.43	Direct	xxx	xxx	xxx	xxx	xxx		xxx	xxx	xxx	83.43	
21	190	Insurance, Cargo		Direct	xxx	xxx	xxx	xxx	xxx		xxx	xxx	xxx		
22	191	Insurance, Compensation	313.56	Accts. 152-182, incl.	125.53	123.76	53.03	xxx	176.98		xxx	xxx	xxx	11.05	
23	192	Telephone	660.58	Direct	xxx	xxx	xxx	xxx	xxx		xxx	xxx	xxx	660.58	
24	193	Stationery & Printing	276.46	Direct	xxx	xxx	xxx	xxx	xxx		xxx	xxx	xxx	276.46	
25	194	Taxes, Payroll	593.11	Accts. 152-182, incl.	140.42	173.51	174.66	xxx	348.17		xxx	xxx	xxx	44.52	
26	203	High Piling Equipment	1545.62	Direct	1545.62	xxx	xxx	xxx	xxx		xxx	xxx	xxx	xxx	xxx
27	204	Tractors & Trailers	1619.48	Direct per Use	1214.61	404.87	xx	xxx	404.87		xxx	xxx	xxx	xxx	xxx
28		Total-Dock Operation	20,970.48	-	6574.37	4977.34	4619.42	xxx	9596.67	.326	xxx	xxx	xxx	4799.44	.0651
		IV TRAFFIC EXPENSES													
29	303	Rate Adjustment & Tariff Pub	108.41	Direct	xxx	xxx	xxx	108.41	108.41	.0037	xxx	xxx	xxx	xxx	xxx
30		All other Traffic Expenses	3778.40	Direct	xxx	xxx	xxx	xxx	xxx		xxx	xxx	xxx	3778.40	
31		Total-Traffic Expenses	3886.81	-	xxx	xxx	xxx	108.41	108.41	.0037	xxx	xxx	xxx	3886.81	.0513
		V GENERAL & ADMINISTRATIVE													
32	351	Sal. & Exp. General Officers	1953.00	Fixed Cost-50%; Variable-50%	xxx	xxx	xxx	976.50	976.50		xxx	xxx	xxx	976.50	
33	352	Sal. & Exp. General Office Clerks	813.92	Fixed Cost-50%; Variable-50%	xxx	xxx	xxx	406.96	406.96		xxx	xxx	xxx	406.96	
34	353	Accounting & Billing	1921.48	Direct	xxx	xxx	xxx	1921.48	1921.48		xxx	xxx	xxx	xxx	xxx
35	354-59	Other General & Administrative	2388.48	Fixed Cost-50%; Variable-50%	xxx	xxx	xxx	1194.24	1194.24		xxx	xxx	xxx	1194.24	

BREAKDOWN OF WHARF DEMURRAGE COSTS INTO
(1) The Fixed Costs per Ton (i.e., Receiving and Delivery Expense), and
(2) The Variable Expense (i.e., the Floor Space Costs and Overheads, both of which vary with the Period of Storage).

Schedule E
Sheet 2 of 2 sheets

Line No.	Acct. No.	ITEM	Expenses from Schedule B Column (h)	APPORTIONMENT FACTORS	(1) FIXED COSTS: LABOR HANDLING High Piling	LABOR HANDLING Other 1/	Checking	Non-Variable Ovh'd	Subtotal Cols. (f)+(g) + (h)	Cost/Ton Excl. High Pil.2/	(2) VARIABLE COSTS: Floor Space Costs	Initial Space Cost/sq.ft. 3/	Adj'd. Space Cost/sq.ft./30 days 4/	Variable Overhead	Ovh'd Costs/Ton/30 da. 5/	Line No.
	(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)	(j)	(k)	(l)	(m)	(n)	(o)	
		V GENERAL & ADMINISTRATIVE (Cont'd)														
	360	Office Equipment	123.83	Fixed Cost-50%; Variable-50%	xxx	xxx	xxx	61.92	61.92		xxx	xxx	xxx	61.91		36
		Office Space Costs	104.36	Fixed Cost-50%; Variable-50%	xxx	xxx	xxx	52.18	52.18		xxx	xxx	xxx	52.18		37
		Return on Working Capital	232.40	Lines 4,28,31,32-37.	37.88	28.58	26.49	27.42	82.49		46.94			65.09		38
		Total-General & Administrative	7537.47	-	37.88	28.58	26.49	464.78	469.57	.1596	46.94	.0009	.0001	2.56 58	.0374	39
		GRAND TOTAL EXPENSE, Excluding High Piling (Lines 4,8,28,31,39) 7/	38 421 24	-	xxx	5005.83	1646.98	4749.11	16 400.86	.4893	12,685.67	.2295	.0219	11334.72	.1538	40
		High Piling Expense 8/	6 612.25	-	6612.25	xxx	xxx	xxx	xxx	xxx	xxx	xxx	xxx	xxx	xxx	41
		GRAND TOTAL EXPENSE, Including High Piling (Lines 40 and 41)	45 033.49	-	6612.25	5005.83	1646.98	4749.11	21,013.10		12,685.67			11,334.72		42
		(Statistical Items)	Item													
		Total tons Received on Wharf Dem...	29.429	-	xxx	xxx	xxx	xxx	xxx	xxx	xxx	xxx	xxx	xxx	xxx	43
		Total Ton-Months of Storage	78.680	-	xxx	xxx	xxx	xxx	xxx	xxx	xxx	xxx	xxx	xxx	xxx	44
		Tons Receiving High Piling	17.749	-		xxx	xxx	xxx	xxx	xxx	xxx	xxx	xxx	xxx	xxx	45
		Avg. Cost/Ton-High Piling 8/		-	.3725	xxx	xxx	xxx	xxx	xxx	xxx	xxx	xxx	xxx	xxx	46

Demurrage rates are fundamentally built up of two elements, the first being the initial receiving and delivery costs which are independent of the length of the storage period (herein referred to as the fixed costs), and the second being the variable costs which are proportional to the length of the storage period. (See Commission study, Chapter VIII). The first element includes the cost of checking to and from consignee, the cost of physical handling (i.e., high piling and breaking down, or, where no high piling is involved, at least the labor costs for moving, shifting, assembling), and certain minimum overhead costs for accounting, billing, etc. The second element includes the floor space costs, watchmen, insurance, and certain office overheads, all of which are in proportion to the length of time a shipment remains in storage. Where a shipment remains a short period, high piling is not warranted even though the space costs are increased thereby. On long time storage it becomes more economical to high pile as the saving in space costs offsets the labor expense in high piling. Some commodities, because of their nature, are never high piled. Others are high piled regularly. The operator should be in a position to determine for any given commodity which is the most efficient method of handling for any given period of storage. The formula develops the alternative costs for either one tier piling or high piling (recognizing the higher labor cost but reduced floor space cost for the latter as compared to the former).

Schedule E serves to develop the receiving and delivery costs (i.e., the fixed costs) per ton, the floor space costs per square foot per 30 days, and the variable overhead costs per ton per 30 days. There only remains to be obtained the square feet required per ton for the individual commodities for (a) one-tier piling, (b) high piling (see Commission study, page 98). With the above data available the cost for any given commodity for any length of storage period can be computed both with and without high piling. If one assumes that the commodity is high piled whenever it is economically justifiable to do so, the computation showing the lowest cost for any given storage period would be the relevant cost figure to use (see pages 100-110 of Commission study for illustrations of this analysis of demurrage costs).

1/ Includes all labor costs except high piling, i.e., assembling of broken lots honeycombed by partial deliveries, shifting of demurrage cargo blocked off by other tonnage, etc.

2/ Determined by dividing subtotal in column (i) (which excludes high piling costs) by total tons received on wharf demurrage, column (c), line 43.

3/ Divide column (k) by square feet of area assigned to wharf demurrage (see Schedule B, line 91, column (h)).

4/ The areas initially assigned to wharf demurrage embrace aisle space, working areas, waste space around piles, idle space during dull seasons, etc. The Commission study developed that the revenue producing area at principal terminals studied totalled only 60 per cent of entire space assigned to wharf demurrage (i.e., use factor = 60 per cent). Hence to obtain adjusted cost divide column (1) by 0.60. Divide again by 12 to reduce to a cost per revenue producing square foot per month (i.e., column (1) ÷ (0.60 x 12)).

5/ The unit of "tons per 30 days" or ton-months represents the total ton-days of demurrage divided by 30. Develop by special test or from billing records.

6/ Includes only checking costs which are jointly for the account of wharf demurrage and car loading or unloading, and which have been apportioned equally to each service.

7/ Minus High Piling Expense from line 41, column (c).

8/ Develop the expense for high piling per ton (including breaking the pile down) by dividing line 41, column (c) by the tons high piled during the accounting period, line 45, column (c). Or if tonnage data not available, develop cost per ton from special tests. Indicate method used: _____

[fol. 2547] EXHIBIT No. 135

October 5, 1940.

U. S. Maritime Commission, 200 Bush Street, San Francisco, Calif.

GENTLEMEN:

Atten: D. E. Scoll

In compliance with a request made by you at a meeting held between this Board, your Mr. Scoll and Mr. Carlon, we are enclosing five copies of the following statements, covering the period June 30, 1939 and June 30, 1940:

Statement of Status of Financial Accounts.
Statement of Income and Expense.
Statement of Analysis of Income by Facilities.
Statement of Expenditures.
Statement Showing Value of Units Nos. 45 and 56.
Statements of Toll Demurrage by Facilities.
Statement of Total Demurrage Revenue with Net Amount Derived from Wharf Demurrage Indicated.
Statement of Demurrage, Tonnage and Revenue for Piers Nos. 45 and 56.
Statement of Commodities and Square Foot Area Occupied for Terminal Demurrage, Pier 45.

Statement of Commodities and Square Foot Area Occupied Under Terminal Demurrage for Pier 56 will be completed Monday afternoon, along with diagrams of the respective facilities.

Yours very truly, M. H. Gates, Secretary.

CMS:HW.
Enc.

fol. 2548

Board of State Harbor Commissioners
Comparative Statement of Status of Financial Accounts
as of June 30, 1940 and June 30, 1939
Account 1

Assets	Fiscal Year Ended June 30, 1940 Detail	Fiscal Year Ended June 30, 1940 Total	Fiscal Year Ended June 30, 1939 Detail	Fiscal Year Ended June 30, 1939 Total
Fixed Assets:				
Land	$44,189,420 32		$44,189,420 32	
Buildings and Structures	56,750,151 63		56,621,290 36	
Equipment	887,797 49		886,863 84	
Investment in State Belt Railroad of California	$59,238 17		$51,672 31	
Deduct net amount of depreciation less adjustments	33,355 64	25,882 53	21,928 91	29,743 40
		$101,853,251 97		$101,727,317 92
Current Assets:				
Funds:				
San Francisco Harbor Improvement Fund	$715,420 08		$986,810 23	
Third San Francisco Seawall Fund	204,237 48		308,673 62	
State Treasurer-Trustee—Federal Pension Fund and Special Depositors	25,896 90		17,256 08	
Cash on Hand:				
Revolving Fund	20,000 00		35,000 00	
Cash Trust	8,592 20		1,094 99	
Accounts Receivable	258,367 91		209,913 74	
Fort Mason Tunnel Account Agreement	124,876 18		139,720 19	
Store	80,323 57		82,704 57	
Work in Process	24,831 26		3,392 79	
Clearing Account	34 50		367 01	
Total Current Assets		1,462,580 08		1,784,933 22
Sinking Funds:				
Second San Francisco Seawall	$2,342,602 98		$2,107,528 70	
Third San Francisco Seawall	1,428,841 53		1,220,094 74	
India Basin	234,902 05		212,187 54	
Total Sinking Funds		4,006,346 56		3,539,810 98
Total Assets		$107,322,178 61		$107,052,062 12
Liabilities				
Funded Debt:				
India Basin bonds issued and outstanding	$853,000 00		$853,000 00	
Second San Francisco Seawall bonds issued and outstanding	9,000,000 00		9,000,000 00	
Third San Francisco Seawall bonds issued and outstanding	9,450,000 00		9,450,000 00	
Total Funded Debt		19,303,000 00		19,303,000 00
Current Liabilities:				
Claims Payable:				
San Francisco Harbor Improvement Fund	$86,543 84		$97,995 94	
Third San Francisco Seawall Fund	3,894 12		117 00	
				$98,112 94
Bond Interest Accrued	386,060 00			386,060 00
Federal Pension Fund and Special Depositors	25,896 90			17,256 08
Special Depositors—Cash Trust	8,592 20			1,094 99
Total Current Liabilities		510,987 06		502,524 01
Total Liabilities		$19,813,987 06		$19,803,524 01
Net Assets Over Liabilities		$87,508,191 55		$87,246,538 11
Surplus and Reserves:				

Current Assets:						
Funds:						
San Francisco Harbor Improvement Fund		$715,420.08			$986,810.23	
Third San Francisco Seawall Fund		204,237.48			308,673.62	
State Treasurer-Trustee—Federal Pension Fund and Special Depositors		25,896.90			17,256.08	
Cash on Hand:						
Revolving Fund		20,000.00			35,000.00	
Cash Trust		8,592.20			1,094.99	
Accounts Receivable		258,367.91			209,913.74	
Fort Mason Tunnel Account Agreement		124,876.18			139,720.19	
Store		80,323.57			82,704.57	
Work in Process		24,831.26			3,392.79	
Clearing Account		34.50			367.01	
Total Current Assets			1,462,580.08			1,784,933.22
Sinking Funds:						
Second San Francisco Seawall		$2,342,602.98			$2,107,528.70	
Third San Francisco Seawall		1,428,841.53			1,220,094.74	
India Basin		234,902.05			212,187.54	
Total Sinking Funds			4,006,346.56			3,539,810.98
Total Assets			$107,322,178.61			$107,052,062.12
Liabilities						
Funded Debt:						
India Basin bonds issued and outstanding		$853,000.00			$853,000.00	
Second San Francisco Seawall bonds issued and outstanding		9,000,000.00			9,000,000.00	
Third San Francisco Seawall bonds issued and outstanding		9,450,000.00			9,450,000.00	
Total Funded Debt			19,303,000.00			19,303,000.00
Current Liabilities:						
Claims Payable:						
San Francisco Harbor Improvement Fund		$86,543.84		$97,995.94		
Third San Francisco Seawall Fund		3,894.12		117.00	$98,112.94	
Bond Interest Accrued		386,060.00			$98,112.94	
Federal Pension Fund and Special Depositors		25,896.90			386,060.00	
Special Depositors—Cash Trust		8,592.20			17,256.08	
					1,094.99	
Total Current Liabilities			510,987.06			502,524.01
Total Liabilities			$19,813,987.06			$19,805,524.01
Net Assets Over Liabilities			$87,508,191.55			$87,246,538.11
Surplus and Reserves:						
Surplus:						
Balance at beginning of period		$8,252,971.03			$8,001,493.25	
Add net income for the period	$215,356.85			$88,363.89		
Less prior year adjustments 1940—Add 1939	1,984.52	213,372.33		163,113.89	251,477.78	
Balance in surplus end of period		$8,466,343.36			$8,252,971.03	
Reserves:						
For depreciation		15,213,899.84			15,215,120.84	
Accrued Rental Revenue under Litigation		56,580.00			27,060.00	
Total earned Surplus and Reserves		$23,736,823.20			$23,495,151.87	
Property Valuation Surplus		62,918,483.59			62,918,483.59	
Federal P. W. A. Grants		852,884.76			832,902.65	
Total Surplus and Reserves			$87,508,191.55			$87,246,538.11

[fol. 2549]

Board of State Harbor Commissioners
Comparative Statement of Income and Expense for the Fiscal Year Ended
June 30, 1940 and June 30, 1939
Account 2

	Fiscal Year Ended June 30, 1940			Fiscal Year Ended June 30, 1939		
Revenue						
Operating—						
Dockage	$197,818.50			$217,636.90		
Tolls	846,312.49			628,339.24		
Wharf demurrage	157,421.18			166,341.27		
Rentals	1,005,010.35			1,049,182.85		
Belt Railroad—						
Switching	280,251.80			279,159.45		
Car storage	4,761.00			5,472.00		
Team track rental	957.50			1,112.50		
Crane and other equipment rental	22.50			142.50		
Sunday switching	1,530.00			935.00		
Other revenue	3,505.62			3,547.41		
Hire of freight cars—credit	3,888.00			4,044.00		
Total Operating Revenue	$2,501,478.94			$2,355,913.12		
Less Refunds and Allowances	67,409.33			26,133.76		
Total Net Operating Revenue		$2,434,069.61			$2,329,779.36	
Non-Operating—						
Overhead credit account	$5,367.50			$5,385.44		
Power service and current sales	29,579.26			28,878.94		
Cash discount earned	2,155.09			2,693.61		
Interest earned	6,625.99			7,120.65		
Rental equipment	2,890.04			2,216.50		
Miscellaneous	2,313.35			1,745.36		
Laboratory service	253.03			3,002.20		
Total Non-operating Revenue		49,184.26			51,042.70	
Total Revenue			$2,483,253.87			$2,380,822.06
Expense						
Administration	$160,445.89			$175,785.96		
Port operating	501,781.83			478,358.84		
Port maintenance	590,467.70			597,727.71		
Belt Railroad:						
Maintenance of way, structures and equipment	102,973.62			112,286.53		
Conducting transportation	236,555.90			229,744.02		
Administration	23,972.21			25,435.31		
Total Expense			1,616,197.15			1,619,338.37
Net Income from All Operations			$867,056.72			$761,483.69
Additions—						
Fire losses	$516.50			$		
Interest earnings from sinking funds	120,596.25			104,971.25		
Total Additions			121,112.75			104,971.25
Total			$988,169.47			$866,454.94
Deductions—						
Bond interest and discount	$772,120.00			$772,120.00		
Uncollectible accounts receivable	692.62			5,231.47		
Fire profit and loss				739.58		
Total Deductions			772,812.62			778,091.05
Surplus to accumulated excess income for replacement of facilities and retirement of bonds			$215,356.85			$88,363.89

[fol. 2550]

ACCOUNT 2—SCHEDULE 1

Board of State Harbor Commissioners
Comparative Statement of Analysis of Income from Operations for the Fiscal Years Ended June 30, 1940 and June 30, 1939

Account Number	Totals		Rentals		Dockage		Tolls		Wharf Demurrage	
	1940	1939	1940	1939	1940	1939	1940	1939	1940	1939
Pier 1	$20,999.34	$13,176.05	$14,951.41	$9,721.95	$2,516.35	$2,117.25	$3,531.58	$1,336.85		
" 3	27,493.52	26,879.63	14,980.32	14,960.73	6,701.70	8,373.90	5,799.00	3,545.00	$ 12.50	
" 5	18,122.80	17,489.85	11,853.32	12,205.80	3,973.70	3,916.30	2,266.65	1,352.75	29.13	$ 15.00
" 7	19,981.08	17,860.50	12,110.06	11,427.28	5,245.90	4,887.10	2,567.11	1,545.24	58.01	88
" 9	30,782.85	13,720.53	13,178.96	3,487.38	3,782.00	3,628.50	12,784.66	5,601.47	1,037.23	1,003.18
" 14	46,568.78	46,645.03	45,392.88	45,395.28	1,141.05	1,217.90	34.85	31.85		
" 15	23,106.45	21,387.91	10,711.08	10,917.72	1,511.95	1,907.70	9,639.99	7,952.49	1,243.43	610.00
" 16	17,797.47	14,181.70	8,412.48	8,880.24	2,061.80	2,065.65	7,121.80	2,973.93	201.39	261.88
" 17	16,940.22	13,800.67	4,622.26	5,725.80	5,580.50	4,806.65	5,275.58	3,175.20	1,461.88	93.02
" 18	23,776.53	17,709.76	13,101.24	10,701.52	1,965.10	2,135.70	8,434.55	4,858.29	275.64	14.25
" 19	33,495.56	28,984.38	9,853.68	9,853.68	2,791.55	2,303.55	17,917.80	16,044.99	2,932.53	782.16
" 20	9,765.12	16,355.90	3,587.30	10,858.41	1,551.10	2,220.50	4,078.68	3,250.74	548.04	26.25
" 22	16,190.91	10,154.30	3,307.32	1,733.00	3,323.65	3,525.05	9,217.05	4,723.62	342.89	172.63
" 23	30,748.99	26,650.45	10,717.32	10,697.32	2,615.95	2,367.20	15,865.19	13,002.34	1,550.53	613.59
" 24	23,320.31	20,382.70	10,391.28	10,391.28	2,192.75	2,541.45	10,668.89	7,438.09	67.39	11.88
" 25	29,754.77	29,847.10	13,344.76	13,424.76	4,044.15	5,624.75	11,585.73	10,108.23	780.13	689.36
" 26	46,017.81	41,919.38	16,348.68	16,348.68	4,367.95	4,942.50	22,547.73	18,224.10	2,753.45	2,404.10
" 27	5,200.57	3,201.90	1,668.68	552.50	597.85	742.90	1,825.64	880.85	1,108.40	1,025.65
" 28	43,003.81	39,014.16	9,294.12	9,294.12	4,322.75	5,373.90	28,864.52	24,263.26	522.42	82.88
" 29	40,823.76	35,746.10	18,815.04	18,509.24	2,690.20	3,147.15	17,569.76	11,771.10	1,748.76	2,318.61
" 30	104,202.94	85,181.08	23,913.12	23,621.88	7,197.00	7,728.15	72,229.07	53,568.55	863.75	262.50
" 31	43,496.33	31,201.86	11,931.36	10,558.80	3,183.35	3,889.85	27,318.95	16,695.40	1,062.67	57.75
" 32	63,402.50	51,036.95	18,192.36	17,250.84	9,395.65	10,090.10	34,015.41	23,233.07	1,799.08	462.94
" 33	26,474.24	28,345.82	10,189.92	10,189.92	3,151.00	4,315.95	11,039.47	13,399.27	2,093.85	440.68
" 34	22,343.33	19,704.80	7,728.48	7,728.48	2,368.30	2,493.55	11,580.65	9,177.22	665.90	305.55
" 35	72,878.57	70,536.71	24,455.76	28,300.59	4,334.50	6,996.05	40,264.30	34,650.76	3,824.01	589.31
" 36	15,503.23	13,338.29	3,152.88	3,885.61	3,518.05	4,805.55	8,551.98	4,496.08	280.32	151.05
" 37	36,885.64	34,505.76	16,931.04	17,201.04	2,672.70	3,380.65	15,822.90	12,804.25	1,458.91	1,119.82
" 38	38,656.87	37,544.12	15,949.80	15,949.80	3,876.20	4,956.65	15,692.93	14,913.91	3,137.94	1,723.76
" 39	33,629.98	26,986.19	12,560.88	12,560.88	4,178.05	3,753.50	15,796.55	10,070.99	1,094.50	600.82
" 40	47,779.16	36,191.08	25,257.12	20,239.02	5,431.30	5,840.35	15,609.70	8,511.10	1,481.04	1,600.61
" 41	46,766.42	46,284.97	17,314.84	16,971.28	4,689.45	4,953.70	21,840.07	22,062.01	2,922.06	2,297.98
" 42	42,912.15	36,850.63	12,048.90	12,797.25	3,220.00	4,600.85	26,921.48	19,324.66	721.77	127.87
" 43	10,166.13	13,197.61	6,339.60	6,067.50	963.95	999.15	2,862.58	6,127.08		3.88
" 44	49,143.77	38,510.98	17,567.04	17,912.36	2,412.65	3,602.35	26,120.53	16,243.76	3,043.55	752.51
" 45	44,967.02	40,842.10	1,114.76	1,209.12	5,862.80	5,593.75	25,131.39	19,004.54	12,858.07	15,032.69
" 46	27,266.11	19,390.29	6,676.80	1,686.00	2,669.65	4,434.10	17,086.86	12,894.39	832.80	375.80
" 47	2,135.64	2,100.00	2,135.64	2,100.00						
" 48	56,652.51	37,080.84	19,774.90	13,177.42	5,417.75	3,808.50	30,080.16	18,387.52	1,379.70	1,713.40
" 49	51,742.35	50,668.99	23,353.26	21,889.64	25,196.65	25,335.30	3,192.44	3,444.05		
" 50	30,374.15	22,781.05	2,236.60	8,123.59	4,872.80	3,525.65	22,868.03	10,628.48	396.72	503.33
" 52	1,631.39		1,559.20		41.15		31.04			
" 54	19,896.41	17,757.96	4,150.00	3,201.00	3,036.50	4,105.45	9,043.82	5,294.12	3,666.59	5,160.39
" 56	28,981.86	35,263.82	1,501.08	6,090.36	4,746.70	6,798.25	14,545.03	12,585.92	8,189.05	9,789.29
" 58	1,830.00	1,980.00	1,830.00	1,980.00						
" 60	20,955.66	19,019.24	62.95	69.00	5,759.90	6,365.35	15,126.43	12,572.39	6.38	12.50
" 62	780.00	880.50	780.00	880.50						
" 64	6,915.24	6,955.24	6,915.24	6,955.24						
" 66	44,428.99	40,253.95	7,217.40	7,217.40	7,622.00	7,523.00	29,589.59	25,508.42		5.43
" 68	65.00		65.00							
" 70	10,833.78	10,833.78	10,833.78	10,833.78						
" 86	5,433.15	3,702.85	240.00	240.00	1,508.35	1,002.70	3,684.80	2,460.15		
" 88	7,893.70	6,986.28	120.00	120.00	2,039.95	2,599.75	5,730.15	4,256.63	3.60	9.90
" 90	42,100.94	47,726.98	3,600.00	3,600.00	1,787.30	2,541.15	11,305.34	41,203.03	25,408.30	30,382.80
" 92	21,477.16	17,656.83	1,115.86	1,926.22	2,686.90	3,749.95	13,229.87	9,304.34	3,444.53	2,676.32
" 156	60,112.34	80,057.37							60,112.34	80,057.37

[fol. 2551]

ACCOUNT 2—SCHEDULE 1

Board of State Harbor Commissioners
Comparative Statement of Analysis of Income from Operations for the Fiscal Years Ended June 30, 1940 and June 30, 1939

	Account Number	Totals		Rentals		Dockage		Tolls		Wharf Demurrage	
		1940	1939	1940	1939	1940	1939	1940	1939	1940	1939
Ferry Slip	200	$ 7,233.46	$ 2,070.90	$ 7,233.46	$ 2,070.90	$	$	$ 62.81	$ 27.78	$	$
"	201	1,312.81	1,027.78	1,250.00	1,000.00						
"	202	12,394.70	13,296.96	12,394.70	13,296.96						
"	203	8,257.95	11,543.67	8,257.95	11,543.67						
"	204	7,251.59	10,244.88	7,251.59	10,244.88						
"	205	9,871.53	10,003.50	9,870.00	10,003.50			1.53			
"	206	781.08	5,911.74	781.08	5,911.74						
"	207	615.00	400.00	615.00	400.00						
"	208	2,100.00	11,335.33	2,100.00	2,100.00				9,235.33		
"	209	20,851.61	12,390.28	9,000.00	9,000.00			11,851.61	3,390.28		
"	210	18,033.43	15,322.28	12,237.48	12,101.28			5,795.95	3,221.00		
"	250	2,308.39	575.28	2,277.00	389.00			31.39	186.28		
"	260	42,281.95	23,643.40	5,040.00	5,040.00			37,241.95	18,603.40		
"	261	18,306.91	25,179.49	14,400.00	14,400.00			3,906.91	10,779.49		
"	262										
"	263	43,512.47	27,366.70					43,512.47	27,366.70		
"	264		629.50						629.50		
Ferry building and annexes 275–278		146,571.54	197,560.84	146,571.54	197,560.84						
Seawall lots Nos. 300–344		182,161.39	181,864.05	182,161.39	181,864.05						
Miscellaneous rent		14,607.37	20,773.33	14,607.37	20,773.33						
Clay and Embarcadero		3,504.03	3,891.43	3,504.03	3,891.43						
Total Port Revenue		$2,206,562.52	2,061,500.26	1,005,010.35	1,049,182.85	197,818.50	217,636.90	846,312.49	628,339.24	157,421.18	166,341.27
Belt Railroad											
Switching		280,251.80	279,159.45								
Car Storage		4,761.00	5,472.00								
Team track rental		957.50	1,112.50								
Crane and other equipment rental		22.50	142.50								
Sunday switching service		1,530.00	935.00								
Other revenue		3,505.62	3,547.41								
Hire freight cars—credit		3,888.00	4,044.00								
Total Operating Revenue		$2,501,478.94	2,355,913.12	1,005,010.35	1,049,182.85	197,818.50	217,636.90	846,312.49	628,339.24	157,421.18	166,341.27

[fol. 2552]

Account 2—Schedule 2

Board of State Harbor Commissioners

Comparative Statement of Expenditures for Administration, Operation, and Maintenance of the Port; Maintenance of Way and Structures, Maintenance of Equipment, Cost of Conducting Transportation, and Administration of State Belt Railroad

	Account Numbers	Fiscal Year Ending June 30, 1940		Fiscal Year Ending June 30, 1939	
Administration—					
Executives and assistants	401	$28,488.46		$26,860.45	
Administrative engineering	402	17,534.03		17,962.08	
Accounting	403	27,771.92		25,849.75	
General office expenses	404	44,638.25		44,672.59	
Chief Wharfinger's office	405	5,461.13		5,263.68	
Law department	406	5,101.57		6,550.14	
Traffic department	407	2,619.30		6,263.90	
Laboratory	408	3,977.12		6,077.05	
Preliminary engineering	409	21.30		28.55	
Advertising and publicity	410	6,018.13		14,896.76	
Office housing	411	.....		.....	
Stationery and printing	412	5,083.50		7,382.91	
General fund	413	13,731.18		13,978.10	
Total Administration			$160,445.89		$175,785.96
Port Operating Expenses—					
Piers and Wharves:					
Wharfingers	502	$46,486.85		$50,104.50	
Light and power	503	15,108.60		16,493.05	
General wharf expense	504	25,508.25		26,933.57	
State Refrigeration Terminal	505	52,649.78		66,659.30	
Total Piers and Wharves			$139,753.48		$160,190.42

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Account 2—Schedule 2

Board of State Harbor Commissioners.

Comparative Statement of Expenditures for Administration, Operation, and Maintenance of the Port; Maintenance of Way and Structures, Maintenance of Equipment, Cost of Conducting Transportation, and Administration of State Belt Railroad

	Account Numbers	Fiscal Year Ending June 30, 1940		Fiscal Year Ending June 30, 1939	
Fire Protection—					
Fire boat service	507	$83,796.91		$70,628.67	
Fire hydrant and alarm system	508	1,082.40		1,158.17	
Fighting fires	509	.....		.....	
Fire insurance	510	64,888.20		18,317.00	
Total Fire Protection			149,767.51		90,103.84
Public Welfare Service—					
Embarcadero bus service	520	$.....		$.....	
Police service	521	15,313.66		12,231.34	
Special police service	522	.....		.....	
Fog bells, signs and signals	523	26.89		28.05	
Street lighting	524	8,727.91		10,071.31	
Total Public Welfare Service			24,068.46		22,330.70
Street and Sanitation Service—					
Cleaning streets	541	$6,836.59		$7,228.26	
Total Street and Sanitation Service			6,836.59		7,228.26
Electric Power System—					
Power Control	550	$12,700.90		$13,049.31	
Commercial Electric Current	551	14,072.90		14,449.05	
Power connections and service	552	2,839.10		2,912.38	
Total Electric Power System			29,612.90		30,410.74

[fol. 2553]

Automotive Equipment—					
Automobiles	560	$2,593.04		$2,760.77	
Auto trucks	561	1,269.02		1,381.19	
Miscellaneous equipment	562	6.44		6.21	
Chauffeur service	563	1,239.55		1,547.82	
Truck driver service	564	5,611.43		5,806.22	
Total Automotive Equipment			$10,719.48		$11,502.21
Ferry Building—					
Superintendence	570	$		$1,841.46	
Heating system	571	8,764.25		8,871.42	
Fuel for heating system	572	3,904.56		6,240.75	
Light and power	573	16,834.13		20,500.62	
Water	574	3,830.65		4,381.40	
Ladies' Waiting Room	575	5,245.82		7,499.79	
Janitor service	576	35,611.71		38,565.62	
Miscellaneous	577	480.00		480.00	
Light and power	578	810.64		1,121.15	
Total Ferry Building			75,481.76		89,502.21
Undistributed Expense—					
Vacation and sick leave	585	$12,368.34		$17,506.15	
Store expense	586	2,893.20		3,633.45	
Boom operation	587	9,455.31		8,608.93	
Injuries to persons	588	13,242.67		8,481.25	
Miscellaneous	590	41.92		94.98	
Stores Adjustments	591	566.53*		170.16*	
Prior year expense	592				
Retirement system	593	28,494.03		29,235.86	
Payroll adjustment	594	387.29*			
Total Undistributed Expense			65,541.65		67,090.46
Total Port Operation			$501,781.83		$478,358.84

ACCOUNT 2—SCHEDULE 2

Board of State Harbor Commissioners

Comparative Statement of Expenditures for Administration, Operation and Maintenance of the Port; Maintenance of Way and Structures, Maintenance of Equipment, Cost of Conducting Transportation, and Administration of State Belt Railroad

	Account Number	Fiscal Year Ended June 30, 1940		Fiscal Year Ended June 30, 1939	
Port Maintenance:					
Engineering—					
Maintenance Engineering	600	$16,402.11		$13,207.10	
Total Engineering			$16,402.11		$13,207.10
General Superintendence—					
Superintendence	603	$11,926.82		$13,718.20	
Total General Superintendence			11,926.82		13,718.20
* Deficit.					
[fol. 2554]					
Pier and Wharf Substructures—					
Pier No. 1	605		$103.55		$3,360.96
3	"		8,811.22		149.08
5	"		371.86		440.24
6	"		.....		28.23
7	"		1,983.84		3,232.49
9	"		14.37		14.00
14	"		7,813.22		42.05
15	"		1,080.23		.....
16	"		6,851.27		3,413.31
17	"		1,424.23		14.55
18	"		12,843.23		7,766.88
19	"		.....		1.40
20	"		113.44		2,360.23

22	"	708.00	20.26
23	"	1,510.44	1,102.58
24	"	134.09	13.07
25	"	2,738.55	6,422.10
26	"	489.86	4,525.64
27	"	3,445.63	.....
28	"	3,867.17	2,722.60
29	"	9,574.43	23.41
30	"	5,187.85	3,876.26
31	"	10,611.62	.....
32	"	4,496.77	8,205.77
33	"	213.87	4,487.90
34	"	888.94	172.40
35	"	6,162.12	6,961.58
36	"	3.39	4.86
37	"	2,383.46	9,089.21
38	"	348.50	146.08
39	"	846.32	5,263.43
40	"	7,833.18	3,054.42
41	"	19,299.63	20,889.23
42	"	10,141.77	477.31
43	"	7,565.48	18,861.91
44	"	502.45	550.22
45	"	37.45	*134.32
46	"	8,020.38	13,300.87
47	"	7,620.88	38.43
48	"	2,027.30	473.25
49	"	1,238.59	661.20
50	"	1,974.37	2,159.33
54	"	361.50	6,629.93
56	"	2,150.75	2,580.36
58	"	.....	513.95
60	"	.....	409.08
62	"	7,905.28	51.20
64	"	251.61	328.33
66	"	2.90	.....
68	"	.....	6.44

ACCOUNT 2—SCHEDULE 2

Board of State Harbor Commissioners

Comparative Statement of Expenditures for Administration, Operation and Maintenance of the Port; Maintenance of Way and Structures, Maintenance of Equipment; Cost of Conducting Transportation, and Administration of State Belt Railroad

	Account Numbers	Fiscal Year Ended June 30, 1940		Fiscal Year Ended June 30, 1939	
86	"	2,653.93		.....	
88	"	1,147.51		2,642.90	
90	"	3,873.51		15,418.51	
92	"	84.05		9.95	
Total Pier and Wharf Substructures			$179,713.99		$162,783.07

*Deficit.

[fol. 2555]

Pier and Wharf Sheds—					
Pier Shed No. 1	606	$1,927.51		$588.11	
3	"	5,290.64		4,704.96	
5	"	701.87		7,713.07	
7	"	809.45		5,014.91	
9	"	275.67		62.48	
11	"	1.21		.....	
14	"	4,230.32		3,065.21	
15	"	59.98		107.11	
16	"	8,249.92		20,887.31	
17	"	4,010.84		1,069.20	
18	"	2,185.09		1,205.16	
19	"	214.14		147.58	
20	"	591.95		5,516.29	
21	"	1.76		.....	
22	"	1,960.59		345.66	
23	"	330.44		60.57	
24	"	387.76		792.98	

25		224.18		1,612.97	
26		3,590.67		1,402.25	
27		435.59		867.06	
28		2,622.96		372.33	
29		940.01		1,376.03	
30		2,782.73		1,547.71	
31		1,356.34		5,171.00	
32		524.85		5,530.34	
33		3,621.42		120.92	
34		3,723.22		302.03	
35		2,055.50		2,144.48	
36		235.32		6,097.22	
37		29.36		376.30	
38		1,721.97		872.24	
39		706.04		274.81	
40		362.66		3,993.54	
41		1,160.10		4,144.18	
42		3,095.09		1,791.89	
43		13.77		6.61	
44		8,439.73		1,157.89	
45		737.04		859.49	
46		3,094.77		675.84	
47		3.56		4.38	
48		1,431.54		231.33	
49		3,942.05		1,376.55	
50		883.17		9,292.52	
54		1,207.68		553.50	
56		7,717.20		14,257.16	
58		.....		15.89	
62		224.16		4.81	
88		1.43		.....	
90		18,394.14		1,644.62	
Total Pier and Wharf Sheds			$106,507.39		$119,358.44
Floats—					
Floats and Appurtenances	607	$2,423.48		$4,228.47	
Total Floats and Appurtenances			2,423.48		4,228.47

[fol. 2556]

ACCOUNT 2—SCHEDULE 2

Board of State Harbor Commissioners

Comparative Statement of Expenditures for Administration, Operation, and Maintenance of the Port; Maintenance of Way and Structures, Maintenance of Equipment, Cost of Conducting Transportation, and Administration of State Belt Railroad

		Account Numbers	Fiscal Year Ending June 30, 1940		Fiscal Year Ending June 30, 1939	
Ferry Slips and Dolphin Buildings—						
Ferry Slip Substructures:						
Passenger Ferry Slip No.	200	610	.....		$26.51	
	201	610	.....		335.35	
	202	610	361.60		651.68	
	203	610	63.73		470.52	
	204	610	597.29		467.82	
	205	610	788.86		682.92	
	206	610	468.38		256.85	
	207	610	130.26		591.83	
Automobile Ferry Slip No.	208	610	175.62		10.20	
	209	610	348.54		73.11	
	210	610	469.58		304.03	
	250	610	46.18		.....	
Car Ferry Slip No.	261	610	.....		.....	
	262	610	67.18		90.09	
	263	610	153.29		1,068.68	
	264	610	96.31		91.72	
Total Ferry Slip Substructures				$3,766.82		$5,121.31
Ferry Slips (Dolphin) Buildings—						
Dolphin Building No.	200	611	.....		$9.12	
	202	611	254.19		286.49	
	203	611	5.20		728.31	
	204	611	.47		12.36	
	205	611	2.38		956.79	
	206	611	34.68		188.01	

207	611	51.94		.....	
208	611	78.27		.....	
209	611	6.88		.....	
210	611	.....		.....	
Total Dolphin Buildings			434.01		2,181.08
Dredging Basins and Channels—					
Superintendence	615	$3,787.73		$3,388.74	
Operating Dredges and Scows	616	62,072.38		66,348.51	
Operating Tugs	617	47,549.26		50,236.74	
Total Dredging			113,409.37		119,973.99
Streets, Sewers and Seawall Lots—					
Pavement	621	$6,352.59		$15,790.16	
Sewers and Drains	622	334.58		265.70	
Sidewalks and Curbs	623	11.80		.....	
Seawall Lots	624	924.94		1,361.04	
Total Streets, Sewers and Seawall Lots			7,623.91		17,416.90
Fire Protection—					
Fire Equipment	625	$4,532.28		$1,623.19	
Total Fire Protection			4,532.28		1,623.19
Signs and Signals—					
Fog Bells, Signs and Signals	627	$412.07		$717.31	
Traffic Signs and Signals	628	2,109.39		1,587.01	
Total Signs and Signals			2,521.46		2,304.32

[fol. 2557]

ACCOUNT 2—SCHEDULE 2

Board of State Harbor Commissioners

Comparative Statement of Expenditures for Administration, Operation, and Maintenance of the Port; Maintenance of Way and Structures, Maintenance of Equipment, Cost of Conducting Transportation, and Administration of State Belt Railroad

	Account Numbers	Fiscal Year Ending June 30, 1940		Fiscal Year Ending June 30, 1939	
Underground Conduits and Pier Systems—					
Underground Electric Equipment	630	$968.88		$2,943.65	
Pier and Ferry Slip Electric Systems	631	12,684.86		12,819.39	
Total Underground Conduits and Piers			$13,653.74		$15,763.04
Ferry Building—					
Maintenance of Ferry Building	635	$25,819.79		$21,819.35	
Heating System	636	3,987.27		3,123.69	
Lighting System	637	5,927.92		4,673.46	
Water System	638	3,971.14		2,607.14	
Ladies' Waiting Room	639				
Ferry Building Tower	640	1,006.38		2,668.11	
Annex A	641	377.95		7,084.66	
Annex B	642	656.83		313.18	
Annex C	643	344.08		506.57	
Subway	644	737.40		91.07	
Viaduct	645				
Total Ferry Building			42,828.76		42,887.23
Other Buildings—					
Buildings other than Pier Sheds and Ferry Building Group	650	$580.15		$3,880.00	
Total Buildings			580.15		3,880.00

Maintenance of Equipment—					
Dredges, Tugs and Scows:					
Dredge No. 3	655	$5,062.09		$2,146.14	
Dredge No. 4	655	9,115.98		2,943.91	
Tug No. 10	656	3,720.34		6,985.99	
Tug No. 11	656	3,294.92		2,234.42	
Scow No. 22	657	401.99		236.70	
Scow No. 23	647	1,750.35		814.46	
Scow No. 24	657	3,632.72		414.59	
Scow No. 25	657	4,447.43		384.23	
Total Dredges, Tugs and Scows			31,434.82		16,160.44
Pile Drivers and Derricks—					
Driver No. 1	660	$2.48		.....	
Driver No. 2	660	328.73		$326.29	
Driver No. 3	660	340.84		2,433.00	
Driver No. 6	660	684.20		1,255.07	
Driver No. 7	660	.....		11.44	
Driver No. 8	660	.....		96.72	
Driver No. 10	660	.....		10.11	
Oil Barge 11	660	.....		247.65	
Total Pile Drivers and Derricks			1,356.25		4,380.28
Launches—					
Launch No. 1	661	$2,366.83		$205.04	
Total Launches			2,366.83		205.04
Land Equipment—					
General Shop Expense	665	$3,866.38		$4,092.24	
Garage Expense	666	729.24		1,113.37	
Automobiles	667	2,093.91		1,470.27	
Auto Trucks	668	699.87		1,251.10	
Street Sweepers	669	494.18		67.87	

ACCOUNT 2—SCHEDULE 2.

Board of State Harbor Commissioners

Comparative Statement of Expenditures for Administration, Operation, and Maintenance of the Port; Maintenance of Way and Structures, Maintenance of Equipment, Cost of Conducting Transportation, and Administration of State Belt Railroad

	Account Numbers	Fiscal Year Ending June 30, 1940		Fiscal Year Ending June 30, 1939	
Miscellaneous Equipment	670	364.43		1,425.38	
Undistributed Shop Expense	671	1,684.00		2,758.17	
Total Land Equipment			9,842.61		12,178.40
Undistributed Expense—					
Vacation and Sick Leave	673	$39,142.90		$40,357.21	
Total Undistributed Expense			39,142.90		40,357.21
Total Port Maintenance			$590,467.70		$597,727.71
Total Port Administration, Operation, and Maintenance			$1,252,695.42		$1,251,872.51

[fol. 2558]

Belt Railroad

Maintenance of Way and Structures—					
Superintendence	3201	$2,760.70		$1,827.15	
Roadway Maintenance	3202	5,166.92		5,154.57	
Tunnels and Subways	3206	.....		.....	
Bridges, Trestles and Culverts	3208	.....		.....	
Ties	3212	1,329.52		3,964.17	
Rails	3214	107.69		1,619.68	
Other Track Material	3216	5,101.98		7,333.70	
Ballast	3218	765.65		2,554.72	
Track Laying and Surfacing	3220	21,566.76		30,358.72	
Right of Way and Fences	3221	.....		.....	
Crossings and Signs	3225	.....		.....	

Station and Office Buildings	3227	73.10		43.91	
Roadways and Buildings	3229				
Water Stations	3231	2.81		16.20	
Fuel Stations	3233	10.87			
Shops and Engine Houses	3235	11,325.96		5,434.49	
Miscellaneous Structures	3265	118.89			
Paving	3267	145.22		560.64	
Roadway Machines	3269	150.53		194.43	
Small Tools and Supplies	3271	1,286.22		1,777.68	
Injuries to Persons	3274	733.50		56.69	
Total Maintenance of Way and Structures			$50,646.32		$60,896.75
Maintenance of Equipment—					
Superintendence	3301	$5,765.71		$5,696.01	
Shop Machinery	3302	1,209.67		1,258.52	
Steam Locomotives:					
Locomotive No. 1	3308	3,573.20		3,700.82	
" 4	3308				
" 6	3308	3,507.33		3,751.07	
" 7	3308	3,148.08		3,910.43	
" 8	3308	3,080.53		3,569.79	
" 9	3308	3,451.76		3,755.72	
" 10	3308	3,692.78		3,272.71	
" 11	3308	3,185.12		4,196.22	
" General	....	1,465.11			
Other Locomotives:					
Locomotive Crane	3309	563.52		1,857.87	
Freight Train Cars	3314	16,800.02		16,260.46	
Work Equipment	3326				
Injuries to Persons	3332	2,861.00		160.16	
Stationery and Printing	3334	6.30			
Other expenses	3335	17.17			
Total Maintenance of Equipment			52,327.30		51,389.78

ACCOUNT 2—SCHEDULE 2

Board of State Harbor Commissioners

Comparative Statement of Expenditures for Administration, Operation, and Maintenance of the Port; Maintenance of Way and Structures, Maintenance of Equipment, Cost of Conducting Transportation, and Administration of State Belt Railroad

	Account Numbers	Fiscal Year Ending June 30, 1940		Fiscal Year Ending June 30, 1939	
Cost of Conducting Transportation—					
Yardmaster and Yard Clerks	4377	$41,374.78		$40,871.04	
Yard Conductors and Brakemen	4378	87,564.11		79,219.00	
Yard Enginemen	4380	54,176.25		49,656.49	
Fuel for Yard Locomotives	4382	19,826.90		25,565.35	
Water for Yard Locomotives	4385	3,683.33		3,916.92	
Lubricants for Yard Locomotives	4386	851.71		873.73	
Other Supplies for Yard Locomotives	4387	537.84		547.20	
Engine House Expenses, Yard	4388	20,650.70		19,825.41	
Yard Supplies and Expenses	4399	3,582.84		3,322.01	
Telephone and Telegraph Operation	4407	218.56		271.84	
Stationery and Printing	4410	196.65		948.61	
Other Expenses	4411	.....		41.28	
Clearing Wrecks	4415	147.41		147.48	
Damage to Property	4416	24.03		411.37	
Injuries to Persons	4420	560.79		561.29	
Hire of Freight Cars	4421	3,160.00		3,565.00	
Total Cost of Conducting Transportation			$236,555.90		$229,744.02

[fol. 2559]

Administration—

Insurance	5455				214 94		
Stationery and Printing	5458	194 27					
Other Expenses	5460				1,849 61		
Store Expenses	5461	1,916 33					
Contributions to Employees' Retirement System	5462	10,371 23			10,207 08		
Contributions to Federal Retirement System	5463				1,865 32		
Total Administration			$23,972 21			$25,435.31	
Total Belt Railroad				$363,501 73			$367,465 86
Grand Total				$1,616,197 15			$1,619,338·37

[fol. 2559a]

ACCOUNT 1—SCHEDULE 5

Board of State Harbor Commissioners

Statement Showing Value of Units 45 and 56 and the Total of All Other Units of Property and Equipment as of June 30, 1940 and June 30, 1939

	Detail June 30, 1940	Total June 30, 1940	Detail June 30, 1939	Total June 30, 1939
Unit 45				
Land—Submerged	$305,237.50		$305,237.50	
Improvements	1,974,469.50		1,975,033.08	
		$2,279,707.00		$2,280,270.58
*Unit 56				
Land—Submerged	$103,521.25		$103,521.25	
Improvements	1,297,906.49		1,297,906.49	
		1,401,427.74		1,401,427.74
Unit 56 Annex*				
Land—Filled	$285,648.30		$285,648.30	
Improvements	256,614.49		256,521.03	
		542,262.79		542,169.33
All Other Units		82,390,072.07		82,258,586.03
		$86,613,469.60		$86,482,453.68

Values of improvements shown above are cost of reproduction less depreciation.

* NOTE: Cost of converting part of Unit No. 56 and installing machinery and equipment for a Refrigeration Terminal not included in cost of Unit No. 56.

In considering costs per square foot on above facilities, it should be taken into account that they are designed as General Purpose facilities for the handling of all classes of shipping operations.

The plans for Unit 56 originally called for a six story building, and the foundation and first two floors were so constructed. Also, the investment in Unit 56 contains seawall construction.

Unit 45 contains a large area in the center of solid fill and car ferry slip facilities.

(Here follow Exhibit "A", side folio 2560 and Exhibit "B", side folio 2561)

[fol. 2560]

EXHIBIT "A"

Board of State Harbor Commissioners

Annual Analysis of Toll Tonnage by Piers for the Period July 1939 to June 30, 1940

Pier No.	Tonnage Discharged: Foreign 1 Add	Intercoastal 2 Add	Inland 3 Waterways Add	Coastwise 4 Add	Total Discharged Subt.-Disct.	Tonnage Loaded: Foreign 1 Add	Intercoastal 2 Add	Inland 3 Waterways Add	Coastwise 4 Add	Total Loaded Subt.-Disct.	Total Tonnage Disct.-Subt.
1			38938 0		38938 0			3040 1		3040 1	41978 1
3			10478 0		10478 0			56552 8	401 0	56953 8	67431 8
5			8056 0	23 0	8079 0			17231 4		17231 4	25310 4
7	508 0		5775 0		6283 0	265 6	274 1	22243 7	543 0	23326 4	29609 4
9	854 0	867 0	204 0	43633 9	45558 9	1480 7	126 9	173 3	73461 3	75242 2	120801 1
14						108 0		301 0		409 0	409 0
15	9794 8	21101 5	190 0		31086 3	14482 8	1354 1	125 3	77 2	16039 4	47125 7
16	4420 0	843 0	104 0	7165 0	12532 0	5498 0	299 0	1 0	42591 1	48389 1	60921 1
17	3886 8	138 0	6435 4	9351 2	19811 4	12466 5	1474 0	4911 0	161 2	19012 7	38824 1
18	1621 9	1592 0		1740 9	4954 8	19826 9		117 0	47149 7	67093 6	72048 4
19	21374 5			151 2	21525 7	71672 5		50 0		71722 5	93248 2
20	7187 4	81 0	4080 0	2349 5	13697 9	12410 8	944 0	352 5	344 0	14051 3	27749 2
22	18967 0	11930 5	190 0	133 0	31220 5	14375 0	1997 7	91 0	2001 0	18464 7	49685 2
23	33870 1		21 0		33891 1	44879 8				44879 8	78770 9
24		16866 5	132 0	688 2	17686 7	50 0	37535 2	50 0	3.0	37658 2	55344 9
25	20832 1		1861 7		22693 8	65802 3				65802 3	88496 1
26		107675 8		38 4	107714 2		3345 5		1164 5	4510 0	112224 2
27			23288 5		23288 5			871 4		871 4	24159 9
28	12 0	2591 6		3059 6	5663 2	216 0	147929 0	52 0	86 0	148283 0	153946 2
29	63 6	77465 3			77528 9	922 0	8989 2	48 0		9959 2	87488 1
30	6423 5	1024 0	30 0		7477 5	431694 7	1090 0			432784 7	440262 2
31		47553 6			47553 6		97070 5			97070 5	144624 1
32	72062 0				72062 0	124482 0	9281 0			133763 0	205825 0
33	14429 1		32 0		14461 1	41249 0	3372 0			44621 0	59082 1
34	43 6	37653 2	100 0		37796 8	3043 2	20438 7			23481 9	61278 7
35	1777 0	50718 8	1740 0	19494 4	73730 2	21906 5	153281 2		3041 1	178228 8	251959 0
36	12083 0	3089 0	523 6	2401 4	18097 0	32472 1	273 8	424 7	490 5	33661 1	51758 1
37	42138 4	1339 0	765 0	7634 1	51876 5	39233 0	138 0		2114 2	41485 2	93361 7
38	29519 4	13449 8	202 0	11751 0	54922 2	27653 7	7417 4		1735 6	36806 7	91728 9
39	3674 4	24509 3	178 0		28361 7	32835 8	26510 9	71 0		59417 7	87779 4
40	8 0	2642 6	102 0	39220 4	41973 0	2572 5	2070 0	26 0	117264 5	121933 0	163906 0
41	43368 8	11172 0	105 0	280 0	54925 8	48250 3	18552 0			66802 3	121728 1
42	10 0	497 0	43 0	370 0	920 0	179178 7	2297 1			181475 8	182395 8
43			40486 0	5953 3	46439 3	31 0		514 0	2664 4	3209 4	49648 7
44	114759 3	846 4	7 0		115612 7	19769 5	4561 5			24323 0	139934 7
45	30953 7	5087 2	1059 2	519 8	37619 9	101692 9	330 7	14 0	142 3	102179 9	139799 8
46	35206 2	2758 1	40 0		38004 3	62698 3	22 0		1039 9	63760 2	101764 5
48	8706 3	100734 8	329 0	661 1	110431 2	27028 1	14217 6	318 0	67 0	41630 7	152061 9
49			54621 6		54621 6	39 0		7593 6	172 0	7804 6	62426 2
50	16666 4	29871 7	474 6	2612 6	49625 3	34782 3	26362 9	3801 0	2026 8	66973 0	116598 3
52			133 1		133 1						133 1
54	15862 5	6068 8	6484 0	637 0	29052 3	3574 3	15882 5	50 0	228 0	19734 8	48787 1
56	14792 7	11263 5	29 6		26085 8	55035 2	1573 3	623 0		57231 5	83317 3
60	31477 5		14066 9	63198 8	108743 2	10191 8		664 0	330 0	11185 8	119929 0
66			420842 9	88995 4	509838 3	1408 0		21929 8	5552 0	28889 8	538728 1
86			71594 0		71594 0			2090 0	11 0	2101 0	73695 0
88	2692 9		9726 2	35553 9	47973 0	40 0		139 0	1892 6	2071 6	50044 6
90	2108 9			139 0	2247 9	66240 0				66240 0	68487 9
92			16395 6	146546 2	162941 8			398 0	3429 8	3827 8	166769 6
201								927 6		927 6	927 6
205			10 2		10 2			5 1		5 1	15 3
209			113319 0		113319 0			126447 1		126447 1	239766 1
210			34472 0		34472 0			30779 0		30779 0	65251 0
250								1960 6		1960 6	1960 6
260			235277 0		235277 0			162386 0		162386 0	397663 0
261			46947 4		46947 4			27016 1		27016 1	73963 5
263			322784 5		322784 5			178968 0		178968 0	501752 5
Totals	622155 8	591431 0	1492674 0	494302 3	3200563 1	1631549 8	609031 8	673357 1	310184 7	3224123 4	6424686 5

Pier No.	Foreign 1 Add	Inter-coastal 2 Add	Inland 3 Water ways Add	Coast-wise 4 Add	Total Discharged Subt.-Disct.	Foreign 1 Add	Inter-coastal 2 Add	Inland 3 Water ways Add	Coast-wise 4 Add	Total Loaded Subt.-Disct.	Disct.-Subt.
1			38938 0		38938 0			3040 1		3040 1	41978 1
3			10478 0		10478 0			56552 8	401 0	56953 8	67431 8
5			8056 0	23 0	8079 0			17231 4		17231 4	25310 4
7	508 0		5775 0		6283 0	265 6	274 1	22243 7	543 0	23326 4	29609 4
9	854 0	867 0	204 0	43633 9	45558 9	1480 7	126 9	173.3	73461 3	75242 2	120801 1
14						108 0		301 0		409 0	409 0
15	9794 8	21101 5	190 0		31086 3	14482 8	1354 1	125 3	77 2	16039 4	47125 7
16	4420 0	843 0	104 0	7165 0	12532 0	5498 0	299 0	1 0	42591 1	48389 1	60921 1
17	3886 8	138 0	6435 4	9351 2	19811 4	12466 5	1474 0	4911 0	161 2	19012 7	38824 1
18	1621 9	1592 0		1740 9	4954 8	19826 9		117 0	47149 7	67093 6	72048 4
19	21374 5			151 2	21525 7	71672 5		50 0		71722 5	93248 2
20	7187 4	81 0	4080 0	2349 5	13697 9	12410 8	944 0	352 5	344 0	14051 3	27749 2
22	18967 0	11930 5	190 0	133 0	31220 5	14375 0	1997 7	91 0	2001 0	18464 7	49685 2
23	33870 1		21 0		33891 1	44879 8				44879 8	78770 9
24		16866 5	132 0	688 2	17686 7	50 0	37555 2	50 0	3 0	37658 2	55344 9
25	20832 1		1861 7		22693 8	65802 3				65802 3	88496 1
26		107675 8		38 4	107714 2		3345 5		1164 5	4510 0	112224 2
27			23288 5		23288 5			871 4		871 4	24159 9
28	12 0	2591 6		3059 6	5663 2	216 0	147929 0	52 0	86 0	148283 0	153946 2
29	63 6	77465 3			77528 9	922 0	8989 2	48 0		9959 2	87488 1
30	6423 5	1024 0	30 0		7477 5	431694 7	1090 0			432784 7	440262 2
31		47553 6			47553 6		97070 5			97070 5	144624 1
32	72062 0				72062 0	124482 0	9281 0			133763 0	205825 0
33	14429 1		32 0		14461 1	41249 0	3372 0			44621 0	59082 1
34	43 6	37653 2	100 0		37796 8	3043 2	20438 7			23481 9	61278 7
35	1777 0	50718 8	1740 0	19494 4	73730 2	21906 5	153281 2		3041 1	178228 8	251959 0
36	12083 0	3089 0	523 6	2401 4	18097 0	32472 1	273 8	424 7	490 5	33661 1	51758 1
37	42138 4	1339 0	765 0	7634 1	51876 5	39233 0	138 0		2114 2	41485 2	93361 7
38	29519 4	13449 8	202 0	11751 0	54922 2	27653 7	7417 4		1735 6	36806 7	91728 9
39	3674 4	24509 3	178 0		28361 7	32835 8	26510 9	71 0		59417 7	87779 4
40	8 0	2642 6	102 0	39220 4	41973 0	2572 5	2070 0	26 0	117264 5	121933 0	163906 0
41	43368 8	11172 0	105 0	280 0	54925 8	48250 3	18552 0			66802 3	121728 1
42	10 0	497 0	43 0	370 0	920 0	179178 7	2297 1			181475 8	182395 8
43			40486 0	5953 3	46439 3	31 0		514 0	2664 4	3209 4	49648 7
44	114759 3	846 4	7 0		115612 7	19760 5	4561 5			24322 0	139934 7
45	30953 7	5087 2	1059 2	519 8	37619 9	101692 9	330 7	14 0	142 3	102179 9	139799 8
46	35206 2	2758 1	40 0		38004 3	62698 3	22 0		1039 9	63760 2	101764 5
48	8706 3	100734 8	329 0	661 1	110431 2	27028 1	14217 6	318 0	67 0	41630 7	152061 9
49			54621 6		54621 6	39 0		7593 6	172 0	7804 6	62426 2
50	16666 4	29871 7	474 6	2612 6	49625 3	34782 3	26362 9	3801 0	2026 8	66973 0	116598 3
52			133 1		133 1						133 1
54	15862 5	6068 8	6484 0	637 0	29052 3	3574 3	15882 5	50 0	228 0	19734 8	48787 1
56	14792 7	11263 5	29 6		26085 8	55035 2	1573 3	623 0		57231 5	83317 3
60	31477 5		14066 9	63198 8	108743 2	10191 8		664 0	330 0	11185 8	119929 0
66			420842 9	88995 4	509838 3	1408 0		21929 8	5 52 0	28889 8	538728 1
86			71594 0		71594 0			2090 0	11 0	2101 0	73695 0
88	2692 9		9726 2	35553 9	47973 0	40 0		139 0	1892 6	2071 6	50044 6
90	2108 9			139 0	2247 9	66240 0				66240 0	68487 9
92			16395 6	146546 2	162941 8			398 0	3429 8	3827 8	166769 6
201								927 6		927 6	927 6
205			10 2		10 2			5 1		5 1	15 3
209			113319 0		113319 0			126447 1		126447 1	239766 1
210			34472 0		34472 0			30779 0		30779 0	65251 0
250								1960 6		1960 6	1960 6
260			235277 0		235277 0			162386 0		162386 0	397663 0
261			46947 4		46947 4			27016 1		27016 1	73963 5
263			322784 5		322784 5			178968 0		178968 0	501752 5
Totals	622155 8	591431 0	1492674 0	494302 3	3200563 1	1631549 8	609031 8	673357 1	310184 7	3224123 4	6424686 5

Summary

	Foreign	Intercoastal	Inland Waterways	Coastwise	Total
Total Discharged	622155 8	591431 0	1492674 0	494302 3	3200563 1
Total Loaded	1631549 8	609031 8	673357 1	310184 7	3224123 4
Grand Totals	2253705 6	1200462 8	2166031 1	804487 0	6424686 5

[fol. 2561]

EXHIBIT "B"

Board of State Harbor Commissioners

Annual Analysis of Toll Tonnage by Piers for the Period July 1, 1938 to June 30, 1939

Pier No.	Tonnage Discharged: Foreign 1 Add	Inter-coastal 2 Add	Inland Water ways 3 Add	Coast-wise 4 Add	Total Discharged Subt.-Disct.	Tonnage Loaded: Foreign 1 Add	Inter-coastal 2 Add	Inland Water ways 3 Add	Coast-wise 4 Add	Total Loaded Subt.-Disct.	Total Tonnage Disct.-Subt.
1			24918 0		24918 0			4156 5		4156 5	29074 5
3			14493 4		14493 4			58131 8		58131 8	72625 2
5			8830 0		8830 0			18214 9		18214 9	27044 9
7			10199 8	1545 0	11744 8	60 0	166 0	19220 8		19446 8	31191 6
9	6872 8	13173 3	215 0	19825 6	40086 7	3279 6	3354 7	119 5	18895 2	25649 0	65735 7
14						104 0		316 0	9 0	429 0	429 0
15	24862 4	8497 5	23 0	27 0	33409 9	20697 0	988 2	154 0		21839 2	55249 1
16	407 0	603 0	401 0	8732 9	10143 9				47817 9	47817 9	57961 8
17	5348 0		7761 5	8820 0	21929 5	10889 3	22 0	5301 1	3725 1	19937 5	41867 0
18	4030 3	1120 0	50 0	1502 9	6703 2	11898 8			51345 7	63244 5	69947 7
19	26457 7		9 0		26466 7	86741 4	123 0			86864 4	113331 1
20	2300 0		15712 6	1573 5	19586 1	2102 4		2001 2	34651 9	38755 5	58341 6
22	13602 7	9563 4	865 3	3 2	24034 6	11408 2	959 0		306 0	12673 2	36707 8
23	25691 1				25691 1	61551 3				61551 3	87242 4
24		17098 8	50 0	335 0	17483 8		32773 5	56 0	97 9	32927 4	50411 2
25	21526 1		1824 0		23350 1	73480 7				73480 7	96830 8
26		110187 0		47 0	110234 0		10527 5		1698 0	12225 5	122459 5
27			16696 0	30 0	16726 0			878 8	55 0	933 8	17659 8
28		5753 4	10 0	2475 7	8239 1	101 0	159898 9	10 0		160009 9	168249 0
29	136 3	73092 6	2 0	61 0	73291 9	461 0	9090 4		111 0	9662 4	82954 3
30	4317 1				4317 1	436676 1	302 2		12 0	436990 3	441307 4
31	489 3	42208 9	74 0	70 0	42842 2	1200 0	76178 2		44 0	77422 2	120264 4
32	88718 6		51 0		88769 6	87386 4	930 0			88316 4	177086 0
33	19788 9		33 0	24 0	19845 9	69645 3				69645 3	89491 2
34		39028 8	120 0	114 7	39263 5	7862 6	22018 3	22 0	94 0	29996 9	69260 4
35		49844 4	2203 0	45252 3	97299 7		182775 2		16971 1	199746 3	297046 0
36	10429 3	411 8	1410 4	312 0	12563 5	20159 0	40 9	432 4	2840 0	23472 3	36035 8
37	47319 2		292 5	6727 8	54339 5	37008 5			21280 0	58288 5	112626 0
38	26740 0	22362 2	35 8	22193 1	71331 1	30387 3	16944 6		361 8	47693 7	119024 8
39	1519 0	29002 9	216 5	719 4	31457 8	10156 3	32148 5	31 0		42335 8	73793 6
40		476 0	65 0	54499 2	55040 2				121091 1	121091 1	176131 3
41	60577 0	18492 9	60 0	29 2	79159 1	41495 9	35604 2		533 1	77633 2	156792 3
42	169 0	1140 0	99 2	28 8	1437 0	164210 3			1442 7	165653 0	167090 0
43			98274 0	11974 7	110248 7			2252 0	6000 0	8252 0	118500 7
44	77566 0	6020 6	317 0	6815 7	90719 3	30972 5	2829 5	38 0	2661 7	36501 7	127221 0
45	49304 1		281 1	191 0	49776 2	80940 6	195 0	46 0		81181 6	130957 8
46	21203 8	17835 5		181 0	39220 3	45171 8	8228 4	227 0	1152 3	54779 5	98999 8
48	18684 1	72489 7	109 5	17 6	91300 9	13516 8	19936 8	45 0		33498 6	124799 5
49			60053 7		60053 7			9931 2	608 0	10539 2	70592 9
50	15794 0	46142 0	153 6	346 7	62436 3	5576 0	2815 2	3268 0	1125 2	12784 4	75220 7
54	7307 9	9237 5	1251 0	10429 1	28225 5	10852 7	2455 9	1215 6	10684 0	25208 2	53433 7
56	5871 7	10157 2	34 0		16062 9	66666 7	3376 3	1202 4	27 2	71272 6	87335 5
60	44003 0		20297 6	63766 6	128067 2	10265 2	79 5	626 0		10970 7	189037 9
66			378129 9	92196 0	470325 9	16 9		20267 3	6633 0	26917 2	497243 1
86			48824 0		48824 0			379 0		379 0	49203 0
88	1282 4		5925 8	51659 1	58867 3			3074 4	1128 3	4202 7	63070 0
90	26 0		208 0		234 0	74618 2			169 1	74787 3	75021 3
92			15828 7	145730 9	161559 6			433 1	1649 0	2082 1	163641 7
201								555 5		555 5	555 5
208			82312 0		82312 0			133185 3		133185 3	215497 3
209			32328 0		32328 0			37637 9		37637 9	69965 9
210			34360 9		34260 9			30059 1		30059 1	64420 0
250			1999 9		1999 9			4537 7		4537 7	6537 6
260			224882 0		224882 0			147186 0		147186 0	372068 0
261			168226 4		168226 4			47362 8		47362 8	215589 2
263			340798 0		340798 0			206536 0		206536 0	547334 0
264			7377 0		7377 0			5213 0		5213 0	12590 0
Totals	632344 8	603939 4	1628693 1	558257 7	3423235 0	1527559 8	624761 9	764324 3	355220 3	3271866 3	6695101 3

Summary

Inland

Pier No.	Foreign 1 Add	Inter-coastal 2 Add	Inland Water-ways 3 Add	Coast-wise 4 Add	Total Discharged Subt.-Disct.	Foreign 1 Add	Inter-coastal 2 Add	Inland Water-ways 3 Add	Coast-wise 4 Add	Total Loaded Subt.-Disct.	Disct.-Subt.
1			24918 0		24918 0			4156 5		4156 5	20074 5
3			14493 4		14493 4			58131 8		58131 8	72625 2
5			8830 0		8830 0			18214 9		18214 9	27044 9
[illegible]			10199 8	1545 0	11744 8	60 0	166 0	19220 8		19446 8	31191 6
	6872 8	13173 3	215 0	19825 6	40086 7	3279 6	3354 7	119 5	18895 2	25649 0	65735 7
11						104 0		316 0	9 0	429 0	429 0
15	24862 4	8497 5	23 0	27 0	33409 9	20697 0	988 2	154 0		21839 2	55249 1
16	407 0	603 0	401 0	8732 9	10148 9				47817 9	47817 9	57961 8
17	5348 0		7761 5	8820 0	21929 5	10889 3	22 0	5301 1	3725 1	19937 5	41867 0
18	4030 3	1120 0	50 0	1502 9	6703 2	11898 8			51345 7	63244 5	69947 7
19	26457 7		9 0		26466 7	86741 4	123 0			86864 4	113531 1
20	2300 0		15712 6	1573 5	19586 1	2102 4		2001 2	34651 9	38755 5	58341 6
22	13602 7	9563 4	865 3	3 2	24034 6	11408 2	959 0		306 0	12673 2	36707 8
23	25691 1				25691 1	61551 3				61551 3	87242 4
24		17098 8	50 0	335 0	17483 8		32773 5	56 0	97 9	32927 4	50411 2
25	21526 1		1824 0		23350 1	73480 7				73480 7	96830 8
26		110187 0		47 0	110234 0		10527 5		1698 0	12225 5	122759 5
27			16096 0	30 0	16726 0			878 8	55 0	933 8	17659 8
28		5753 4	10 0	2475 7	8239 1	101 0	159898 9	10 0		160009 9	168249 0
29	136 3	73092 6	2 0	61 0	73291 9	461 0	9090 4		111 0	9662 4	82954 3
30	4317 1				4317 1	436676 1	302 2		12 0	436990 3	441307 4
31	489 3	42208 9	74 0	70 0	42842 2	1200 0	76178 2		44 0	77422 2	120264 4
32	88718 6		51 0		88769 6	87386 4	930 0			88316 4	177086 0
33	19788 9		33 0	24 0	19845 9	69645 3				69645 3	89491 2
34		39028 8	120 0	114 7	39263 5	7862 6	22018 3	22 0	94 0	29996 9	69260 4
35		49844 4	2203 0	45252 3	97299 7		182775 2		16971 1	199746 3	293046 0
36	10429 3	411 8	1410 4	312 0	12563 5	20159 0	40 9	432 4	2840 0	23472 3	36035 8
37	47319 2		292 5	6727 8	54339 5	37008 5			21280 0	58288 5	112626 0
38	26740 0	22362 2	35 8	22193 1	71331 1	30387 3	16944 6		361 8	47693 7	119024 8
39	1519 0	29002 9	216 5	719 4	31457 8	10156 3	32148 5	31 0		42335 8	73793 6
40		476 0	65 0	54499 2	55040 2				121091 1	121091 1	176131 3
41	60577 0	18492 9	60 0	29 2	79159 1	41495 9	85604 2		533 1	77633 2	156792 3
42	169 0	1140 0	99 2	28 8	1437 0	164210 3			1442 7	165653 0	167090 0
43			98274 0	11974 7	110248 7			2252 0	6000 0	8252 0	118500 7
44	77566 0	6020 6	317 0	6815 7	90719 3	30972 5	2829 5	38 0	2661 7	36501 7	127221 0
45	49304 1		281 1	191 0	49776 2	80940 6	195 0	46 0		81181 6	130957 8
46	21203 8	17835 5		181 0	39220 3	45171 8	8228 4	227 0	1152 3	54779 5	93999 8
48	18684 1	72489 7	109 5	17 6	91360 9	13516 8	19936 8	45 0		33498 6	124799 5
49			60053 7		60053 7			9931 2	608 0	10539 2	70592 9
50	15794 0	46142 0	153 6	346 7	62436 3	5576 0	2815 2	3268 0	1125 2	12784 4	75220 7
54	7307 9	9237 5	1251 0	10429 1	28225 5	10852 7	2455 9	1215 6	10684 0	25208 2	53433 7
56	5871 7	10157 2	34 0		16062 9	66666 7	3376 3	1202 4	27 2	71272 6	87335 5
60	44003 0		20297 6	63766 6	128067 2	10265 2	79 5	626 0		10970 7	139037 9
66			378129 9	92196 0	470325 9	16 9		20267 3	6633 0	26917 2	497243 1
86			48824 0		48824 0			379 0		379 0	49203 0
88	1282 4		5925 8	51659 1	58867 3			3074 4	1128 3	4202 7	63070 0
90	26 0		208 0		234 0	74618 2			169 1	74787 3	75021 3
92			15828 7	145730 9	161559 6			433 1	1649 0	2082 1	163641 7
201								555 5		555 5	555 5
208			82312 0		82312 0			133185 3		133185 3	215497 3
209			32328 0		32328 0			37637 9		37637 9	69965 9
210			34360 9		34260 9			30059 1		30059 1	64420 0
250			1999 9		1999 9			4537 7		4537 7	6537 6
260			224882 0		224882 0			147186 0		147186 0	372068 0
261			168226 4		168226 4			47362 8		47362 8	215589 2
263			340798 0		340798 0			206536 0		206536 0	547334 0
264			7377 0		7377 0			5213 0		5213 0	12590 0
Totals	632344 8	603939 4	1628693 1	558257 7	3423235 0	1527559 8	624761 9	764324 3	355220 3	3271866 3	6695101 3

Summary

	Foreign	Intercoastal	Inland Waterways	Coastwise	Total
Total Discharged	632344 8	603939 4	1628693 1	558257 7	3423235 0
Total Loaded	1527559 8	624761 9	764324 3	355220 3	3271866 3
Grand Totals	2159904 6	1228701 3	2393017 4	913478 0	6695101 3

[fol. 2562]

Board of State Harbor Commissioners

Statement of Demurrage Revenue Showing Amount of Revenue Derived from All Classes of Wharf Demurrage After Eliminating Special Facilities

	Fiscal Year Ended 6/30/39		Fiscal Year Ended 6/30/40	
		Total		Total
Total Demurrage Revenue		$166,341 27		$157,421 18
Deduct Special Facilities				
Refrigeration Terminal Demurrage	$80,057 37		$60,112 34	
Grain Terminal Demurrage	30,382 80		25,408 30	
		110,440 17		85,520 64
Total Revenue from Wharf Demurrage		$55,301 10		$71,099 54

[fol. 2563]

Board of State Harbor Commissioners

Statement of Demurrage Tonnage and Revenue for Fiscal Year July 1, 1939 to June 30, 1940

Pier 45

	Tons	Revenue
Penalty Demurrage	1290	$442 38
Bulkhead Demurrage	5146	2,294 77
Terminal Demurrage	6803	9,609 20
Total	13239	$12,346 35

Pier 56

	Tons	Revenue
Penalty Demurrage	111	$85 75
Bulkhead Demurrage	848	501 96
Terminal Demurrage	7310	7,599 84
Total	8269	$8,187 55

(Here follows 1 paster exhibit 135, side folio 2564)

[fol. 2564]

564)

EXHIBIT 135

Board of State Harbor Commissioners
Statement of Commodities and Square Foot Area Occupied
Terminal Demurrage—Pier 45
Tonnage of Commodities

	Perilla Seed	Solvent	Fertilizer	News-print	Oiticia Oil	Sesame Seed	Wood Pulp	Firtex	Lubri-cating Oil	Sugar	Logs	Copra	Pulp-board	Total Tons	Total Square Foot Area
July, 1939	1,263	12	1,331	315	86	306	.....	.....	.....	.....	.....	.....	.....	3,313	39,707
August, 1939	937	16	1,083	314	269	.....	170	5	50	.....	.....	.....	.....	2,844	37,959
September, 1939	633	34	560	312	471	.....	.....	.....	.....	.....	.....	.....	.....	2,010	26,949
October, 1939	507	24	533	283	184	.....	.....	.....	.....	.....	.....	.....	.....	1,531	20,239
November, 1939	507	23	535	.....	158	.....	.....	.....	.....	4,387	.....	.....	.....	5,610	47,824
December, 1939	507	23	535	.....	158	.....	.....	.....	.....	4,387	.....	.....	.....	5,610	47,824
January, 1940	.....	21	287	.....	123	.....	.....	.....	.....	4,207	.....	.....	.....	4,638	37,396
February, 1940	.....	13	1,015	.....	9	.....	.....	.....	.....	3,933	149	.....	.....	5,119	46,223
March, 1940	.....	8	672	.....	5	.....	.....	.....	.....	3,813	.....	562	.....	5,060	48,158
April, 1940	.....	6	376	204	4	.....	.....	.....	.....	1,682	.....	562	.....	2,834	30,678
May, 1940	.....	19	246	.....	3	.....	.....	.....	.....	.....	.....	293	63	624	10,403
June, 1940	.....	29	185	.....	2	.....	.....	.....	.....	.....	.....	135	74	425	7,083
Total Tons	4,354	228	7,358	1,428	1,472	306	170	5	50	22,409	149	1,552	137	39,618	
Square foot unit of conversion per ton	9	16	16	13	16	4	15	10	16	7	7	17	18		

[fol. 2565]

EXHIBIT 131

Howard Terminal
Wharf Demurrage
For the Period, Nov. 1938-Oct. 1939

Tonnage Statistics:

		Tons
Received	28,607 tons	
Delivered	30,251 "	
Average		29,429
Tons—month		73,680
High-piled, tons		17,749

Space used: 55,986 sq. ft.

Gross Revenue		$31,263.55
Expenses		
Direct Labor, including Checking	$12,124.84	
Salaries Allocated	6,737.16	
Taxes, City, County, and Social Security	2,528.16	
Insurance, Fire, Compensation, etc.	600.62	
Depreciation, Structures & Equipment	3,597.56	
Repairs, Structures & Equipment, allocated	1,290.89	
General Expenses, allocated: Watchmen, Cleaning, Telephone, Stationery & Printing, etc.	8,328.33	
Absorptions	83.43	
Claims	239.34	
		35,530.33
Return on Investment		9,503.16
		$45,033.49

(Here follow 1 paster, Exhibit 135-A, folio 2566, Exhibit 135-B, folio 2567, Exhibit 135-C, folio 2568)

[fol. 2566]

EXHIBIT 135-A

Board of State Harbor Commissioners
Statement of Commodities and Square Foot Area Occupied
Terminal Demurrage—Pier 56
Tonnage of Commodities
Main Building

	Cotton	Glass	Linters	Pulp Board	Wool	Total Tons	Total Square Foot Area
July, 1939		12	1,694			1,706	24,484
August, 1939		11	1,516		30	1,557	23,285
September, 1939		17	550			567	9,253
October, 1939		14	394			408	6,820
November, 1939		9	368			377	6,397
December, 1939		12	368			380	6,454
January, 1940		11	368			379	6,424
February, 1940		4	326			330	5,593
March, 1940	164	4	320			488	7,972
April, 1940	428	3	320			751	11,923
May, 1940	266	4	320			590	9,602
June, 1940	467	3	320	211		1,001	16,719
Total Tons	1,325	104	6,864	211	30	8,534	
Square foot unit of conversion per ton	15	18	*12 & 17	20	44		

*Depending upon height of stacking.

[fol. 2567]

EXHIBIT 135-B

Board of State Harbor Commissioners
Statement of Commodities and Square Foot Area Occupied Terminal Demurrage—Pier 56
Tonnage of Commodities
First Floor Annex

	Canned Goods	Cotton	Cocoa Beans	Glass	Kapok	Linters	Lubricating Oil	Old Newspapers	Peat Moss	Sugar	Wool	Total Tons	Total Square Foot Area
July, 1939		145	191					56	38		82	512	12,031
August, 1939	148	50	262						28		47	535	12,242
September, 1939	490		310						159			959	23,301
October, 1939	490	258	370			7	41		136			1,302	21,441
November, 1939	6	258	186	3		31	41		135	465		1,125	17,661
December, 1939	6	173				31	41		134	463		848	12,554
January, 1940	6	160				372	41		134	463		1,176	16,556
February, 1940		160			14	372	41		131	465		1,183	16,668
March, 1940		321			8	370	41		145	128		1,013	18,113
April, 1940		392			10	41	41		69	21		574	20,041
May, 1940		1,375		1	3	34	41		43			1,497	24,114
June, 1940		3,068		1		29	41		39			3,178	45,037
Total Tons	1,146	6,360	1,319	5	35	1,287	369	56	1,191	2,005	129	13,902	
Square foot unit of conversion per ton *Depending upon height of stacking	19	*15 & 14	20	18	26	*12 & 17	18	11	*49 & 24	4.35	44		

[fol. 2567]

EXHIBIT 135-B

Board of State Harbor Commissioners
Statement of Commodities and Square Foot Area Occupied Terminal Demurrage—Pier 56
Tonnage of Commodities
First Floor Annex

	Canned Goods	Cotton	Cocoa Beans	Glass	Kapok	Linters	Lubricating Oil	Old Newspapers	Peat Moss	Sugar	Wool	Total Tons	Total Square Foot Area
July, 1939	.....	145	191	.....	.....	.....	.....	56	38	.....	82	512	12,031
August, 1939	148	50	262	.....	.....	.....	.....	.....	28	.....	47	535	12,242
September, 1939	490	.....	310	.....	.....	.....	.....	.....	159	.....	.....	959	23,301
October, 1939	490	258	370	.....	.....	7	41	.....	136	.....	.....	1,302	21,441
November, 1939	6	258	186	3	.....	31	41	.....	135	465	.....	1,125	17,661
December, 1939	6	173	.....	.....	.....	31	41	.....	134	463	.....	848	12,554
January, 1940	6	160	.....	.....	.....	372	41	.....	134	463	.....	1,176	16,556
February, 1940	.....	160	.....	.....	14	372	41	.....	131	465	.....	1,183	16,668
March, 1940	.....	321	.....	.....	8	370	41	.....	145	128	.....	1,013	18,113
April, 1940	.....	392	.....	.....	10	41	41	.....	69	21	.....	574	20,041
May, 1940	.....	1,375	.....	1	3	34	41	.....	43	.....	.....	1,497	24,114
June, 1940	.....	3,068	.....	1	.....	29	41	.....	39	.....	.....	3,178	45,037
Total Tons	1,146	6,360	1,319	5	35	1,287	369	56	1,191	2,005	129	13,902	.....
Square foot unit of conversion per ton *Depending upon height of stacking	19	*15 & 14	20	18	26	*12 & 17	18	11	*49 & 24	4.35	44		

[fol. 2568]

EXHIBIT No. 135-C

Board of State Harbor Commissioners
Statement of Commodities and Square Foot Area Occupied Terminal Demurrage—Pier 56
Tonnage of Commodities
Second Floor Annex

	Cocoa Beans	Cocoanut Fibre	Cotton	Linters	Sugar	Wool	Total Tons	Total Square Foot Area
July, 1939	.....	.....	.....	.....	.....	8	8	352
August, 1939	.....	.....	.....	.....	.....	3	3	132
September, 1939	.....	.....	.....	.....	.....	.....	.....	.....
October, 1939	.....	.....	.....	.....	.....	.....	.....	.....
November, 1939	.....	.....	.....	.....	578	.....	578	5,029
December, 1939	.....	.....	.....	.....	578	.....	578	5,029
January, 1940	.....	.....	.....	.....	558	.....	558	4,855
February, 1940	.....	.....	.....	.....	540	.....	540	4,698
March, 1940	382	.....	6	72	387	.....	847	12,321
April, 1940	359	.....	51	1,636	.....	.....	2,046	35,307
May, 1940	302	.....	51	77	.....	.....	430	8,114
June, 1940	170	6	189	77	.....	.....	442	7,700
Total Tons	1,213	6	297	1,862	2,641	11	6,030	.....
Square Foot unit of conversion per ton *Depending upon height of stacking	20	26	45	*12 and 17	*8.7 & 4.35	44		

EXHIBIT No. 137

DETERMINATION OF WHARF DEMURRAGE COST OF PORT OF STOCKTON

BASED ON THE FORMULA OF

FORD K. EDWARDS

Prepared by Port of Stockton
October 6, 1940.

PORT OF STOCKTON

SUMMARY OF

TOTAL COSTS AND UNIT COSTS FOR EACH TARIFF SERVICE PLUS A COMPARISON WITH THE CORRESPONDING REVENUES

(Based on Traffic Handled and Expenses Incurred During the Accounting Period)

Summary Schedule
Sheet 1 of 2 sheets

Line No.	TARIFF SERVICES (a)	COSTS FROM (b)	ANNUAL COST Total (c)	ANNUAL COST Per Ton 1/ (d)	ANNUAL REVENUES Total (e)	ANNUAL REVENUES Per Ton 1/ (f)	Line No.
	I TERMINAL SERVICES						
	Dockage						
1	Total Annual Cost	Sched. B, Col. (e), line 86		xxx		xxx	1
2	Cost per "12-hour berth occupancy"	Sched. B, Col. (e), line 87		xxx		xxx	2
	Tolls						
3	a. Total-All Cargo	Sched. C, Col. (c), lines 37 & 39					3
4	b. Cargo Loaded or Discharged by Pipe Line	Sched. C, Cols. (e) & (f), line 37					4
5	c. Bulk Cargo Handled Direct to/from Rail Cars	Sched. C, Cols. (g) & (h), line 37					5
6	d. General Cargo	Sched. C, Cols. (i) & (j), line 37					6
	Service Charges (Clerking Cargo)						
7	a. Total-All Cargo	Sched. D, Col. (c), lines 34 & 36					7
8	b. Cargo Loaded or Discharged by Pipe Line	Sched. D, Cols. (e) & (f), line 34					8
9	c. Bulk Cargo Handled Direct to/from Rail Cars	Sched. D, Cols. (g) & (h), line 34					9
10	d. General Cargo Handled Direct to/from Rail Cars	Sched. D, Cols. (i) & (j), line 34					10
11	e. General Cargo Moving Through Sheds	Sched. D, Cols. (k) & (l), line 34					11
	Wharf Demurrage						
12	a. Total-All Cargo	Sched. E, Col. (c), line 42	34,441.72	xxx	15,935.40	xxx	12
	b. Fixed Costs Per Ton (average)						
13	1. Total-Excluding High Piling	Sched. E, Col. (j), line 40	xxx	.9729	xxx	xxx	13
14	2. High Piling Costs (average)	Sched. E, Col. (e), line 46	xxx	.1843	xxx	xxx	14
	c. Variable Costs						
15	1. Overhead per ton per 30 days	Sched. E, Col. (c), line 40	xxx	.2049 2/	xxx	xxx	15
16	2. Floor space costs per sq. ft. per 30 days	Sched. E, Col. (m), line 40	xxx	.0775 3/	xxx	xxx	16
	Miscellaneous Terminal Services						
17	Car Loading	Sched. F, Col. (e), lines 48 & 49					17
18	Car Unloading	Sched. F, Col. (f), lines 48 & 49					18
19	Weighing	Sched. F, Col. (g), lines 48 & 49					19
20	Stencilling	Sched. F, Col. (h), lines 48 & 49		/hr.		/hr.	20
21	Recoopering	Sched. F, Col. (i), lines 48 & 49		/hr.		/hr.	21
22	Labor Sold (Cost Plus - Hourly Basis)	Sched. F, Col. (j), lines 48 & 49		/hr.		/hr.	22
23	Handling Lines	Sched. F, Col. (k), lines 48 & 49		/hr.		/hr.	23
24	Other	Sched. F, Col. (l), lines 48 & 49		/hr.		/hr.	24
25	Total Miscellaneous			xxx		xxx	25
	Rentals			Per Sq. Ft. Per 30 Days		Per Sq. Ft. Per 30 Days	
26	Steamship and Other Office Rentals 4/	Sched. B, Col. (j), line 92					26
27	Pier Rentals 5/	-	xxx	xxx		xxx	27
28	Land Rentals	6/					28
29	Total Rentals	-		xxx		xxx	29
30	Total-Terminal Services (Sum of lines 1, 3, 7, 12, 25, and 29)			xxx		xxx	30

PORT OF STOCKTON

SUMMARY OF

TOTAL COSTS AND UNIT COSTS FOR EACH TARIFF SERVICE PLUS A COMPARISON WITH THE CORRESPONDING REVENUES
(Based on Traffic Handled and Expenses Incurred During the Accounting Period)

Summary Schedule
Sheet 2 of 2 sheets

Line No.	TARIFF SERVICES (a)	COSTS FROM (b)	ANNUAL COST Total (c)	ANNUAL COST Per Ton 1/ (d)	ANNUAL REVENUE Total (e)	ANNUAL REVENUE Per Ton 1/ (f)	Line No.
	II NON-TERMINAL OPERATIONS 7/ (May be Omitted)						
31	Warehousing (Domestic)	Sched. B, Col. (1), line 59		xxx		xxx	31
32	Producing Power Sold	Sched. B, Col. (1), line 60		xxx		xxx	32
33	Grain Elevators	Sched. B, Col. (1), line 61		xxx		xxx	33
34	Stevedoring	Sched. B, Col. (1), line 62		xxx		xxx	34
35	Terminal Railroad Operations	Sched. B, Col. (1), line 63		xxx		xxx	35
36	Other Operations	Sched. B, Col. (1), line 64		xxx		xxx	36
37	Total--Non-Terminal Operations	-		xxx		xxx	37
38	III GRAND TOTAL-REVENUES (Lines 30 and 37)	-					38

Note: This schedule serves to summarize the results developed herein. The degree to which the items of expense are broken down by classes of tonnage will depend upon the purpose of the study. In the study made by the Railroad Commission of California, Case No. 4090, it was found necessary to carry out the complete breakdown for rate making purposes.

This Formula assumes that the carrying charges upon waterways and piers and wharf structures are fundamentally assignable on the one hand to the vessel in the form of dockage and, on the other hand, to the cargo in the form of tolls (or wharf demurrage if held beyond the free time). This study is not concerned with the fact that some part of the costs assigned herein to dockage or to tolls may ultimately be embraced in pier rentals, service charges, etc., which the port or terminal assesses. This latter is a problem of rate making. The costs, when once found, upon the basis set forth herein can readily be converted into these other units to fit the pricing system of each individual port or terminal. After such conversion, however, the comparability of the costs as between different ports or terminals is, of course, destroyed.

1/ Costs are per ton except as otherwise indicated.

2/ Per ton per 30 days.

3/ Per square foot per 30 days. (Cost is after adjustment for aisle space, etc.).

4/ Costs per square foot per month equal cost per square foot from Schedule B, column (j), line 92, divided by 12. Multiply by the square feet of rental areas to obtain total cost.

5/ No costs are shown for Pier Rentals inasmuch as all pier and waterway expenses involved (except those for office rentals) have been charged, first, against the vessel in the form of dockage, and second, against the cargo in the form of tolls and wharf demurrage. If pier rentals are also charged against the steamship lines, such revenues constitute, in effect, added dockage revenues. (They may also permit of the tariff charges in the form of dockage against the vessel and even of tolls against the cargo being lower than would otherwise be the case).

6/ Develop costs from Schedule B, column (k), line 86, which shows total annual cost for carrying land areas not directly used in cargo handling.

7/ The inclusion of these items is not pertinent to a terminal cost study nor to uniform cost accounting. They are shown here for the reason that most ports and terminals engage in some operations which are not strictly terminal services and their inclusion here permits of a full accounting of the grand total revenues and expenses, if such is desired.

12,8.1

U.S.M.C. DOCKET No 555
EXHIBIT No.
WITNESS

PORT OF STOCKTON

CARRYING CHARGES ON WATERWAYS, STRUCTURES, AND OTHER PLANT FACILITIES

SEPARATED AS BETWEEN WATERWAYS, APRONS, SHEDS, AND OTHER AREAS AND FACILITIES

Schedule A
Sheet 1 of 1

Line No.	Acct. No. (a)	I T E M (b)	Expenses (c)	APPORTIONMENT FACTORS 1/ (d)	Water-ways (e)	APRONS Unit No. 1 (f)	APRONS Unit No. 2 (g)	TRANSIT SHEDS 2/ Unit No. 1 (h)	TRANSIT SHEDS 2/ Unit No. 2 (i)	Trackage Facilities 3/ (j)	Roadway and Truck Areas 3/ (k)	Other Areas and Facilities 4/ (l)	Line No.
		I CARRYING CHARGES - WATERWAYS & STRUCTURES											
	101	Superintendence	324.00	Accts. 101,105,108 and 110				162.00				16.20	1
	102	Engineering	387.14	Acct. 101				38.71				38.73	2
	103	Dredging		Direct		xxx	xxx	xxx	xxx	xxx	xxx	xxx	3
	104	Maint. Wharves & Substructures	1,089.70	Direct 5/				751.89		xxx	xxx	X	4
	105	Depr. Wharves & Substructures	23,041.81	Direct 5/				15,898.85		xxx	xxx	X	5
	106	Maint. Transit Sheds	3,514.99	Direct	xxx	xxx	xxx	3,514.99		xxx	xxx	X	6
	107	Depr. Transit Sheds	19,734.13	Direct	xxx	xxx	xxx	19,734.13		xxx	xxx	X	7
	108	Maint. Trackage Facilities		Direct	xxx	xxx	xxx	xxx	xxx		xxx	xxx	8
	109	Depr. Trackage Facilities		Direct	xxx	xxx	xxx	xxx	xxx		xxx	xxx	9
	110	Maint. Roadway & Truck Areas		Direct	xxx	xxx	xxx	xxx	xxx	xxx		xxx	10
	111	Depr. Roadway & Truck Areas		Direct	xxx	xxx	xxx	xxx	xxx	xxx		xxx	11
	112	Insurance on Structures 6/	5,126.63	Direct, or Coverage	xxx			3,536.68		xxx	xxx	X	12
	113	Maint. Fire Equipment	100.00	Floor Area of Structures	xxx			50.00		xxx	xxx	X	13
	114	Depr. Fire Equipment	328.00	Floor Area of Structures	xxx			165.50		xxx	xxx	X	14
	115	Stationery & Printing	500.00	Acct. 101				200.00				100.00	15
	116-1	Taxes on Structures & Facilities	X	Assessed Val. or Flr Area 7/	xxx			X				X	16
	117-1	Rentals Paid on Struct. & Fac.	X	Direct, or Floor Area	xxx			X				X	17
		Return on Struct. & Fac. at 6%	74,909.39	Value, or Floor Area	xxx			51,687.48				X	18
		Total Carrying Chgs.-Structures	141,393.44	-				95,574.23				154.93	19
		I CARRYING CHARGES ON LAND											
	116-2	Taxes on Land	X	Ground Area 8/				X				X	20
	117-2	Rentals Paid on Land	X	Direct, or Ground Area				X				X	21
		Return on Land at 6%	2,400.00	Ground Area				600.00				X	22
		Total Carrying Chgs - Land	2400.00	-				600.00				X	23
		GRAND TOTAL (Lines 19 and 23)	143,793.44	-				96,34023				154.93	24

1/ The carrying charges, as the term is here used, includes maintenance, depreciation, insurance, taxes, and a return upon the investment. While this form provides for only two wharf units, as many sheets may be added to Schedule A (and the following schedules) as are necessary to account for all wharf and pier units pertinent to the study (see columns (f) and (g), and (h) and (i), respectively). If the straight line method of depreciation is used, compute the return upon the depreciated value of the property used and useful. If the sinking fund method of depreciation is used, compute the return upon the original cost of the property used and useful, but before depreciation.

Apportionment factors on this and subsequent schedules should be used only in the absence of data permitting direct assignment. The distribution is intended to reflect as nearly as practicable the expense properly chargeable to each facility listed.

The term "shed" is here intended to mean the superstructure plus that portion of the substructure which it covers. The remainder is assignable to aprons. A further subdivision of columns (h) and (i) to reflect the substructure and superstructure separately may be made, if desired, to facilitate the accumulation of the costs. The values should be combined for treatment in Schedule B.

3/ Do not include trackage or roadway facilities which are an integral part or the wharf structures. In such case the charges are assigned to the structure.

4/ Embraces all remaining areas used and useful in the provision of the port or terminal service such as fire stations, storage areas, shops, etc., but which are not directly revenue producing.

5/ Assign expense for fender line to waterways (for subsequent inclusion in dockage charges). Estimate on best basis available. Assign remaining expenses for wharves and substructure direct to apron and transit-shed areas, respectively. If direct distribution not available, allocate on basis of floor area in each (or per coverage in case of insurance).

6/ For insurance on cargo (in transit or demurrage) see Schedule B.

7/ Allocate in proportion to the assessed valuation of each structure. Where taxes are assignable to full units including substructure and shed, assign taxes to each on basis of original cost and allocate taxes on substructure to apron on basis of area.

8/ Allocate in proportion to the area upon which each facility rests, waterways, structures, roadways, etc.

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U.S.M.C. Docket No. 561
EXHIBIT No.
WITNESS

PORT OF STOCKTON

SEPARATION OF EXPENSES BETWEEN DOCKAGE, TOLLS, SERVICE CHARGES, WHARF DEMURRAGE, ETC.

Schedule D
Sheet 1 of 5 sheets

Acct. No. (a)	ITEM (b)	Expenses (c)	APPORTIONMENT FACTORS 1/ (d)	Dockage 2/ (e)	Tolls 3/ (f)	Service Charges 4/ (g)	Wharf Demurrage 5/ (h)	Misc. Terminal Services 6/ (i)	OFFICES AND OTHER AREAS 7/ Shed Space (j)	OFFICES AND OTHER AREAS 7/ Land Areas (k)	Non-Terminal Operations 8/ (l)	Line No.
	I CARRYING CHARGES - WATERWAYS & STRUCTURES (from Sched. A line 19)											
	Waterways (Col. e)		Direct 9/		XXX	XXX	XXX	XXX	XXX	XXX		1
	Apron - Unit No. 1 (Col. f)		Use made 9/			XXX	XXX	XXX	XXX	XXX		2
	Apron - Unit No. 2 (Col. g)		Use made 9/			XXX	XXX	XXX	XXX	XXX		3
	Shed - Unit No. 1 (Col. h)	96,740.23	Use made 9/			XXX	19,148.05			XXX	XXX	4
	Shed - Unit No. 2 (Col. i)	X	Use made 9/			XXX	X			XXX	XXX	5
	Trackage Facilities (Col. j)		Tolls 100% 9/	XXX		XXX	XXX	XXX	XXX	XXX	XXX	6
	Roadway Areas (Col. k)		Tolls 100% 9/	XXX		XXX	XXX	XXX	XXX	XXX	XXX	7
	Other Facilities (Col. l)	154.93	Direct 10/			XXX	25.00					8
	Total Carrying Charges - Waterways & Structures (Lines 1-6 Incl.)	141,393.44	-			XXX	19,173.05					9
	I CARRYING CHARGES - LAND (from Sched. A line 24)											
	Land - Waterways (Col. e)		Direct 9/		XXX	XXX	XXX	XXX	XXX	XXX		10
	Land - Apron Unit No. 1 (col. f)		Use made 9/			XXX	XXX	XXX	XXX	XXX		11
	Land - Apron Unit No. 2 (Col. g)		Use made 9/			XXX	XXX	XXX	XXX	XXX		12
	Land - Shed Unit No. 1 (col. h)	600.00	Use made 9/			XXX	120.00			XXX	XXX	13
	Land - Shed Unit No. 2 (col. i)	X	Use made 9/			XXX	X			XXX	XXX	14
	Land - Trackage Facilities (col. j)		Tolls 100% 9/	XXX		XXX	XXX	XXX	XXX	XXX	XXX	15
	Land - Road Areas (Col. k)		Tolls 100% 9/	XXX		XXX	XXX	XXX	XXX	XXX	XXX	16
	Land - Other Facilities (col. l)		Direct 10/			XXX						17
	Total Charges - Land, (Lines 10-17, inclusive)	2,400.00	-			XXX	120.00					18
	II DOCK OPERATION											
51	Superintendence	19,641.12	Accts. 152-182, incl.				1,596.17					19
	(Clerking)											
52-1	Checking Cargo (to/from vessel) 11/		Direct	XXX	XXX		XXX	XXX	XXX	XXX	XXX	20
52-2	Checking Cargo (to/from shipper) 11/		Direct	XXX	XXX		XXX	XXX	XXX	XXX	XXX	21
52-3	Checking Cargo (to/from demurrage) 12/	1,235.00	Direct	XXX	XXX	XXX	1,235.00	XXX	XXX	XXX	XXX	22
52-4	Checking (Acct. car loading)	279.00	Direct 13/	XXX	XXX		139.50		XXX	XXX	XXX	23
52-5	Checking (Acct. Car Unloading)	2,456.86	Direct 13/	XXX	XXX		1,228.27		XXX	XXX	XXX	24
52-6	Checking - Other	X	Direct	XXX	XXX		X		XXX	XXX	XXX	25
53	Making out Ship's Papers 14/		Direct	XXX	XXX		XXX	XXX	XXX	XXX	XXX	26
	(Dock Labor)											
71	Assembling Cargo for Vessel's acct.		Direct	XXX	XXX		XXX	XXX	XXX	XXX	XXX	27
72	Car loading		Direct	XXX	XXX	XXX	XXX		XXX	XXX	XXX	28
73	Car Unloading		Direct	XXX	XXX	XXX	XXX		XXX	XXX	XXX	29
74	Handling & High Piling (Acct. Demurrage)	513.01	Direct	XXX	XXX	XXX	513.01	XXX	XXX	XXX	XXX	30
75	Handling Lines		Direct	XXX	XXX	XXX	XXX		XXX	XXX	XXX	31
76	Weighing		Direct	XXX	XXX	XXX	XXX		XXX	XXX	XXX	32
77	Stenciling		Direct	XXX	XXX	XXX	XXX		XXX	XXX	XXX	33
79	Necessoring		Direct	XXX	XXX	XXX	XXX		XXX	XXX	XXX	34
7/	Misc. Labor (for which cost plus charge assessed)		Direct	XXX	XXX	XXX	XXX		XXX	XXX	XXX	35

(See Sheets 4 and 5 for footnotes).

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U.S.M.C. DOCKET No. 555
EXHIBIT No.
WITNESS

Schedule 9
Sheet 2 of 5 sheets

PORT OF STOCKTON

SEPARATION OF EXPENSES BETWEEN DOCKAGE, TOLLS, SERVICE CHARGES, WHARF DEMURRAGE, ETC.

Line No.	Acct. No.	ITEM	Expenses	APPORTIONMENT FACTORS 1/	Dockage 2/	Tolls 3/	Service Charges 4/	Wharf Demurrage 5/	Misc. Terminal Services 6/	OFFICES AND OTHER AREAS 7/ Shed Space	OFFICES AND OTHER AREAS 7/ Land Areas	Non-Terminal Operations 8/	Line No.
	(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)	(j)	(k)	(l)	
		II DOCK OPERATION (Continued)											
		(Misc. Expenses)											
36	181	Cleaning sheds & docks	1,573.71	Cleaning Requirements 15/	xxx	xxx		483.44			xxx	xxx	36
37	182	Watchmen	4,134.09	Areas 16/				4,226.82					37
38	183	Power for dock use	148.60	Consumption	xxx	xxx		37.15			xxx	xxx	38
39	184	Power for sale		Direct	xxx	xxx	xxx	xxx	xxx	xxx	xxx		39
40	185	Water for dock use	562.81	Consumption	xxx	xxx		140.70			xxx	xxx	40
41	186	Water for sale		Direct	xxx	xxx	xxx	xxx	xxx	xxx	xxx		41
42	187	Claims	289.35	Direct				57.87		xxx	xxx	xxx	42
43	188	Car Demurrage		Direct 17/	xxx		xxx	xxx		xxx	xxx	xxx	43
44	189	Absorptions	X	10/				X		xxx	xxx	xxx	44
45	190	Insurance, Cargo	X	Direct	xxx	xxx		X		xxx	xxx	xxx	45
46	191	Insurance, Compensation	2,114.04	Labor allocation				528.51		xxx	xxx		46
47	192	Telephone	4,318.60	Acct. 151				863.80					47
48	193	Stationery & Printing	1,217.88	Acct. 151				60.88					48
49	194	Taxes, Payroll	X	Accts. 152-182, incl.				X					49
		(Dock Equipment)											
50	201	Car loading-Equipment (Supplies, repairs, depr.)		Direct	xxx	xxx	xxx	xxx		xxx	xxx	xxx	50
51	202	Weighing Equipment (Supplies, repairs, depr.)		Direct	xxx	xxx	xxx	xxx		xxx	xxx	xxx	51
52	203	High piling Equipment (Supplies, repairs, depr.)	X	Direct	xxx	xxx		X	xxx	xxx	xxx	xxx	52
53	204	Tractors & Trailers (Supplies, repairs, depr.)	X	Direct	xxx	xxx		X		xxx	xxx	xxx	53
		(Return at ___ % on Depreciated Value - Dock Equipment)											
		Car Loading Equipment		Direct	xxx	xxx	xxx	xxx		xxx	xxx	xxx	54
		Weighing Equipment		Direct	xxx	xxx	xxx	xxx		xxx	xxx	xxx	55
		High Piling Equipment	X	Relative Use	xxx	xxx		X	xxx	xxx	xxx	xxx	56
		Tractors & Trailers Equipment	X	Relative Use	xxx	xxx		X		xxx	xxx	xxx	57
		Total Dock Operation (Lines 19-57, inclusive)	15,781.06	-				6,111.12					58
		III OTHER PORT OPERATIONS											
		Warehousing		Direct	xxx	xxx	xxx	xxx	xxx	xxx	xxx		59
		Producing Power sold		Direct	xxx	xxx	xxx	xxx	xxx	xxx	xxx		60
		Grain Elevators		Direct	xxx	xxx	xxx	xxx	xxx	xxx	xxx		61
		Stevedoring		Direct	xxx	xxx	xxx	xxx	xxx	xxx	xxx		62
		Terminal Railroad Operations		Direct	xxx	xxx	xxx	xxx	xxx	xxx	xxx		63
		Other Operations		Direct	xxx	xxx	xxx	xxx	xxx	xxx	xxx		64
		Total-Other Port Operations (Lines 59-64, inclusive)		-	xxx	xxx	xxx	xxx	xxx	xxx	xxx		65

(See Sheets 4 and 5 for footnotes).

U.S.M.C. DOCKET No. 555
EXHIBIT No.
WITNESS

PORT OF STOCKTON

SEPARATION OF EXPENSES BETWEEN DOCKAGE, TOLLS, SERVICE CHARGES, WHARF DEMURRAGE, ETC.

Schedule B
Sheet 3 of 5 sheets

Line No.	Acct. No. (a)	ITEM (b)	Expenses (c)	APPORTIONMENT FACTORS 1/ (d)	Dockage 2/ (e)	Tolls 3/ (f)	Service Charges 4/ (g)	Wharf Demurrage 5/ (h)	Misc. Terminal Services 6/ (i)	OFFICES AND OTHER AREAS 7/ Shed Space (j)	OFFICES AND OTHER AREAS 7/ Land Areas (k)	Non-Terminal Operations 8/ (l)	Line No.
		IV TRAFFIC EXPENSES 24/											
	301	Superintendence	4,199.00	Lines 9, 18, 58 (65) 24/				419.90		xxx	xxx		66
	302	Solicitation	13,013.20	Lines 9, 18, 58 (65)				1,301.32		xxx	xxx		67
	303	Rate Adjustment & Tariff Pub.	1,446.50	Lines 9, 18, 58 (65)				289.30		xxx	xxx		68
	304	Dues & Subscriptions	273.30	Lines 9, 18, 58 (65)				54.66		xxx	xxx		69
	305	Stationery & Printing	1,217.58	Lines 9, 18, 58 (65)				60.88		xxx	xxx		70
	306	Other Traffic Expense	X	Lines 9, 18, 58 (65)				X		xxx	xxx		71
		Total Traffic Expenses (Lines 66-71, inclusive)	20,149.58	-				2,126.06		xxx	xxx		72
		V GENERAL & ADMINISTRATIVE 24/											
	351	Salaries & Exp. Gen'l Officers	6,112.50	Lines 9, 18, 58 (65) 24/				611.25		xxx	xxx		73
	352	Salaries & Exp. Gen'l Ofc Clks.	5531.41	Dir., or Lines 9,18,58(65)19/				1,106.29		xxx	xxx		74
	353	Accounting & Billing	4573.22	Direct, or Acct. 351				914.64		xxx	xxx		75
	354	Gen'l Ofc Supplies & Expenses	5,314.42	Line 73				1,062.88		xxx	xxx		76
	355	Legal Expenses	1,901.25	Lines 9, 18, 58 (65)				190.12		xxx	xxx		77
	356	Pensions & Relief	X	Labor Distribution				X		xxx	xxx		78
	357	Insurance, general	X	Direct or Lines 9,18,58(65)				X		xxx	xxx		79
	358	Stationery & Printing	1,217.58	Lines 9, 18, 58 (65)				60.88		xxx	xxx		80
	359	Taxes - Office Payroll	X	Accts. 351-352				X		xxx	xxx		81
	360	Ofc Equipt. (Carrying Chgs) 23/	664.15	Accts. 351-352				66.41		xxx	xxx		82
		Ofc Space Costs (from line 92)	X	Accts. 351-352				X		xxx	xxx		83
		Return on Working Capital 25/	1200.00	Lines 9, 58 (65)				120.00		xxx	xxx		84
		Total-General & Administrative (Lines 73-84, inclusive)	26,514.53	-				4,132.46		xxx	xxx		85
		GRAND TOTAL - EXPENSES (Lines 9,18,58,65,72 and 85)	278,798.61	-				33,662.69					86
		Development of Average Unit Cost 20/											
		Dockage cost per "12-hr berth occupancy" (Line 86 ÷ Line 88)		-		xxx	xxx	xxx	xxx	xxx	xxx	xxx	87
		Statistical Items											
		Vessel "12-hr berth occupancies" 21/		-		xxx	xxx	xxx	xxx	xxx	xxx	xxx	88
		Assignment of Shed Area in Square Feet											
		Unit No. 1	345,650	-				34,565			xxx		89
		Unit No. 2	X	-				X			xxx		90
		Total (lines 89,90)	345,650	-				34,565					91
		Cost Per Square foot-Offices & Other Areas (Lines 9,18,36,37) ÷ Line 91			xxx	xxx	xxx	xxx	xxx		xxx	xxx	92

PORT OF STOCKTON

SEPARATION OF EXPENSES BETWEEN DOCKAGE, TOLLS, SERVICE CHARGES, WHARF DEMURRAGE, ETC.

Apportionment factors of this and subsequent schedules should be used only in the absence of data permitting direct assignment. The distribution is intended to reflect as nearly as practicable the expense properly chargeable to each service listed.

For purposes of cost allocations herein the term dockage is defined as follows: "The charge assessed against a vessel and/or watercraft for docking at a wharf, pier, or seawall structure, or moored to a vessel so docked, or coming within a slip, channel, or basin." In other words, dockage is the charge against the vessel for the use of the wharf for purposes of loading and/or discharging its cargo. The vessel is charged with that wharf space necessary for the physical loading or discharging of its cargo. Such space extends from the fender line up to that point at which the vessel's agents (stevedores) physically take possession of or drop the cargo, (i.e., up to but not including the point of rest).

Under certain circumstances the dockage costs, as herein determined, are assessed against the vessel (in whole or in part) in the form of pier rentals or space rentals. Such rentals may increase the burden laid against the vessel and correspondingly lighten the direct burden against the cargo. The reverse may be true. The formula, as here set up, however, merely seeks to determine what the vessel and the cargo ought to pay purely from a cost of service standpoint based upon the respective use each makes of the facility. The ultimate distribution of these costs against the respective users of the service in the form of tariff charges is not a matter of concern to the cost analyst in applying this Formula.

For purposes of cost allocations herein the term tolls is defined as follows: "A toll is the charge for cargo conveyed on, over, or through a terminal facility, or loaded or discharged while the vessel is berthed at a terminal facility." In other words, the toll is the price paid by the cargo for the use of wharf facilities, i.e., sheds, roadways, trackage facilities, etc. The cargo is assumed to compensate in the form of toll for the carrying charges upon the facilities up to the point where the vessel's stevedores physically take possession of the goods for loading purposes, i.e., up to and including point of rest (but excluding areas devoted to wharf demurrage or shipside storage).

Service Charge items embrace clerical, checking and related services rendered for the account of the vessel. Private terminals may embrace items which are different from those included by the vessel operators themselves when the latter, for accounting purposes, segregate these expenses. At the private terminals on San Francisco Bay the term service charge, as defined in their tariffs, is a charge against the vessel for the rendering of the following services:

(1) Arranging berth for vessel.
(2) Arranging cargo space on wharf.
(3) Checking cargo to or from vessel as required.
(4) Receiving outbound cargo from shipper.
(5) Delivering inbound cargo to consignee.
(6) Preparing manifest or tags covering cargo loaded aboard vessel.
(7) Preparing "over," "short," and "damage" reports.
(8) Ordering cars.
(9) Giving information to shippers and consignees regarding cargo, sailing and arrival dates of vessels.
(10) Lighting wharf.

The above definition has been used for purposes of making the cost allocations herein.

5/ Wharf demurrage is defined as that charge accruing upon the cargo left in the possession of the terminal beyond the free time period. The floor space assignable to wharf demurrage (or shipside storage) is based on tests to develop the annual average areas occupied, or held available for such occupancy.

6/ Embraces car loading, car unloading, weighing, stencilling, recoopering, labor sold on cost plus basis, handling lines, etc. Charge these items with the space devoted to the performance of stencilling, recoopering, weighing, etc., and to the storage of equipment used in car loading, unloading, stencilling, weighing, etc.

7/ Embraces remaining shed or open areas used for the general offices or rented to steamship companies, stevedoring companies, outside stencilling companies, etc. Embraces only non-cargo areas.

8/ Assign to Non-Terminal Operations, column (1), any charges not assignable to the revenue producing terminal services listed. Non-terminal operations include stevedoring, terminal railway operations, etc.

9/ The apportionment of the carrying charges for the waterways, aprons, sheds and other parts of the wharf structure, must rest (from the standpoint of cost finding) upon the relative use made of such facility by the vessel on the one hand and the cargo on the other. The principles involved in such separation are too involved for reproduction here. (See Final Report in C.R.C. study, Case 4090, dated May 16, 1936, pages 11-13). The separation made will vary with the type and uses made of the individual structures. The Commission report lists five illustrations of cost separation. The results of illustration No. 5 follow as an example:

Carrying Charges (a)	Vessel Dockage (b)	CARGO Tolls (c)	CARGO Demurrage (d)	Misc. Terminal Services (e)	Offices & Rental Areas (f)	Non-Terminal Operations (g)
a. Water Areas	100%	-	-	-	-	-
b. Apron-Structure & Track	60%	40%	-	-	-	-
c. Apron-Land	87½%	12½%	-	-	-	-
d. Transit Shed, substructure, superstructure & land	12%	68%	20%	-	-	-
e. Remaining Term. Trackage & Roadways	-	100%	-	-	-	-

The above separation was based on several factors not here listed and represents an oversimplification as no charges have been made for offices and rental areas, etc. However, with the fundamental principles stated as to the portions of the facility which are properly chargeable against the vessel and the portions properly chargeable against the cargo, the breakdown for each wharf or pier is readily obtainable. In the Commission study a breakdown was developed separately for each wharf unit at each of the terminal properties subject to the investigation. It is obvious that the fundamental statement of principles for the separation of the charges between vessel and cargo are all-important.

10/ Assign to Tolls, column (f), the charges upon special facilities or areas utilized by pipe lines in the handling of bulk cargoes, including a portion of the substructure supporting the pipe lines. Assign open areas used for bulk storage to wharf demurrage, column (h).

11/ The checking is for the account of the vessel. Hence cost is included in service charge assessed against vessel.

18/ If cargo goes on wharf demurrage the vessel's responsibility is assumed to have ceased. Checking costs thereafter are for the account of the demurrage cargo and included in the demurrage costs.

19/ Where a check is performed on car loading which serves as a count both for the vessel and for the car loading operation, distribute the costs of such check equally between service charges and car loading. Same principle holds for checking for the joint account of car loading and wharf demurrage.

20/ Involves clerical work in making up dock manifests, dock receipts, loading lists, over, short, and damage reports, etc.

21/ A typical distribution developed for a large wharf covered by the Commission's investigation was as follows: Service charges 65 per cent, miscellaneous services 30 per cent, demurrage 5 per cent. The cleaning occasioned by the receipt and delivery of cargo from and to shippers and by the stevedoring operations was assessed against the vessel in the form of service charges. Such distribution was based on an inspection and check of the cleaning chargeable to each service at each structure.

22/ A typical distribution developed by the Commission study for one terminal property was as follows: Dockage 12.5 per cent, tolls 27.5 per cent, service charges 30 per cent, demurrage 20 per cent, and miscellaneous services 10 per cent. Such distribution arbitrarily assumed that a given proportion (say 50 per cent) of the watchmen's service was devoted to the protection of the cargo, this to be further distributed between service charges and demurrage on the basis of the average volume (or footage) of in-transit and demurrage tonnage so protected. The remaining proportion of the watchmen's time was considered as devoted to the protection of the structures and apportioned according to the time required to make the rounds of each structure and the use to which each was charged. (See apportionments of Carrying Charges on Structures).

23/ Charge to Car Loading and Unloading, respectively, upon basis of demurrage accrued in each. However, when unloading delays arise from lack of shed space to accommodate rail-borne cargo, charge to toll upon principle that such use of cars constitutes a temporary extension of shed space.

24/ Absorptions of one type or another may be made by ports or terminals (or by a steamship line which operates its own terminal). The purpose is to attract cargo from which revenue may be derived through the provision of one or all of the services which the terminal offers. Allocate costs according to revenues currently received from each service, or, if rates are to be subject to significant adjustments, allocate according to distribution of all other expenses herein.

19/ Assign direct where the time of the clerical staff can be segregated through time studies over test periods. Otherwise apportion on the basis of the directly assigned charges.

20/ Average unit costs can be developed at this point in the study by dividing the appropriate total costs in the respective columns by the total service units appropriate thereto. With the exception of dockage costs, however, such unit costs are of limited use for rate making purposes without further breakdown as provided in subsequent schedules. Even in the case of dockage the average cost (applicable to the hypothetical average vessel) should probably be scaled downward for vessels of less than average net registered tonnage and scaled upward for vessels of greater than average tonnage (see rates of progression developed in C.R.C. study, Final Report, pages 52-55). If desired, the dockage costs as herein derived may be subsequently broken down into two elements for rate making purposes, namely, pier rentals and dockage (the latter being reduced to the degree that the pier rentals absorb part of the expenses). The observation is here made that for local competitive reasons approximately 75 per cent of the costs assigned to dockage at the East Bay terminals (San Francisco Bay) were subsequently added, for rate making purposes, to the service charges assessed against the vessel. This permitted the equalization of the dockage charges with those assessed at competitive ports (see above Report, pages 50, 55-56). Such subsequent treatment of dockage costs for rate making purposes does not influence the application of this formula which yields the costs entirely independent of their subsequent treatment for rate making purposes.

21/ This unit is purely arbitrary and used for purposes of illustration only. On the Pacific Coast vessels are assessed dockage on the basis of 4 hours, 12 hours, or 24 hours, depending upon the port. Dockage for fractions of a period should be counted as a full period, i.e., dockage for each 12 hours or fraction thereof constitutes one "12-hour berth occupancy." The C.R.C. study broke the periods down into 4-hour periods.

22/ State herein the area devoted to General and Administrative offices:_____ square feet.

23/ Add to Account 360 an allowance for_____% return upon the depreciated value of the office equipment. State herein the value used and amount thus added. Depreciated value $_____. Return $_____.

24/ If this overhead includes any work performed on behalf of "Non-Terminal Operations," the expenses must be distributed accordingly. Exclude charges to columns (j) and (k).

25/ State amount of working capital normally required to meet current expenses and obligations over period of _____ weeks $_____. In principle, the allocation of the return upon (i.e., cost of) such working capital should be against those services the provision of which requires such working capital.

U.S.M.C. DOCKET No. 555
EXHIBIT No.
WITNESS

PORT OF STOCKTON

BREAKDOWN OF WHARF DEMURRAGE COSTS INTO
(1) The Fixed Costs per Ton (i.e., Receiving and Delivery Expense), and
(2) The Variable Expense (i.e., the Floor Space Costs and Overheads, both of which vary with the Period of Storage).

Schedule E
Sheet 1 of 2 sheets

Line No.	Acct. No.	ITEM	Expenses from Schedule B Column (h)	APPORTIONMENT FACTORS	(1) FIXED COSTS						(2) VARIABLE COSTS					Line No.
					LABOR HANDLING		Checking	Non-Variable Ovh'd	Sub-total Cols. (f)+(g)+(h)	Cost/Ton Excl. High Pile 2/	Floor Space Costs	Initial Space Cost/sq.ft. 3/	Adj'd. Space Cost/sq.ft/30 days	Variable Overhead	Fixed Costs/Ton/30 da. 5/	
					High Piling	Other 1/										
	(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)	(j)	(k)	(l)	(m) 4/	(n)	(o)	
		I CARRYING CHARGES-STRUCTURES														
1		Shed Unit No. 1	19148.05	Direct	XXX	XXX	XXX	XXX	XXX	XXX	19148.05	.5539	.0769	XXX	XXX	1
2		Shed Unit No. 2	X	Direct	XXX	XXX	XXX	XXX	XXX	XXX	X	X	X	XXX	XXX	2
3		Other Facilities	25.00	Direct	XXX	XXX	XXX	XXX	XXX	XXX	25.00	.0072	.0010	XXX	XXX	3
4		Total-Carrying Charges-Structures	19,173.05	-	XXX	XXX	XXX	XXX	XXX	XXX	19173.05	.5546	.0763	XXX	XXX	4
		I CARRYING CHARGES-LAND														
5		Shed Unit No. 1	120.00	Direct	XXX	XXX	XXX	XXX	XXX	XXX	120.00	.0034	.0004	XXX	XXX	5
6		Shed Unit No. 2		Direct	XXX	XXX	XXX	XXX	XXX	XXX	X	X	X	XXX	XXX	6
7		Other Facilities	-	Direct	XXX	XXX	XXX	XXX	XXX	XXX	X	X	X	XXX	XXX	7
8		Total-Carrying Charges-Land	120.00	-	XXX	XXX	XXX	XXX	XXX	XXX	120.00	.0034	.0004	XXX	XXX	8
		II DOCK OPERATION														
9	151	Superintendence	1896.17	Acct. 152-182 incl.	266.02	X	532.04	XXX	532.04	.096	XXX	XXX	XXX	798.09	.0430	9
10	152-3	Checking (to/from Demurrage)	1235.00	Direct	XXX	XXX	1235.00	XXX	1235.00	.2000	XXX	XXX	XXX	XXX	XXX	10
11	152-4	Checking (Acct. Car Loading) 6/	139.60	Direct	XXX	XXX	139.60	XXX	139.60	.0125	XXX	XXX	XXX	XXX	XXX	11
12	152-5	Checking (Acct. Car Unloading) 6/	1228.27	Direct	XXX	XXX	1228.27	XXX	1228.27	.1989	XXX	XXX	XXX	XXX	XXX	12
13	174	Handling & High Pile (a) High Piling	513.01	Direct	XXX	XXX	XXX	XXX	XXX	.0830	XXX	XXX	XXX	XXX	XXX	13
14		(b) Other	X	Direct	XXX	X	XXX	XXX	X	X	XXX	XXX	XXX	XXX	XXX	14
15	181	Cleaning Sheds	493.44	Direct	XXX	XXX	XXX	XXX	XXX	.0782	XXX	XXX	XXX	X	X	15
16	182	Watchmen	1226.82	Direct	XXX	XXX	XXX	XXX	XXX	.1986	XXX	XXX	XXX	X	X	16
17	183	Power for dock use	37.18	Direct	XXX	XXX	XXX	XXX	XXX	.0060	XXX	XXX	XXX	X	X	17
18	185	Water for dock use	140.70	Direct	XXX	XXX	XXX	XXX	XXX	.0227	XXX	XXX	XXX	X	X	18
19	187	Claims	57.87	Direct	XXX	XXX	XXX	XXX	XXX	X	XXX	XXX	XXX	57.87	.0031	19
20	189	Absorptions		Direct	XXX	XXX	XXX	XXX	XXX	X	XXX	XXX	XXX	X	X	20
21	190	Insurance, Cargo		Direct	XXX	XXX	XXX	XXX	XXX	X	XXX	XXX	XXX	X	X	21
22	191	Insurance, Compensation	528.51	Accts. 152-182, incl.	X	X	X	XXX	X	X	XXX	XXX	XXX	528.51	.0285	22
23	192	Telephone	863.90	Direct	XXX	XXX	XXX	XXX	XXX	X	XXX	XXX	XXX	863.90	.0466	23
24	193	Stationery & Printing	40.89	Direct	XXX	XXX	XXX	XXX	XXX	.0098	XXX	XXX	XXX	X	X	24
25	194	Taxes, Payroll	X	Accts. 152-182, incl.	X	X	X	XXX	X	X	XXX	XXX	XXX	X	X	25
26	203	High Piling Equipment	X	Direct	X	XXX	XXX	XXX	XXX	X	XXX	XXX	XXX	XXX	XXX	26
27	204	Tractors & Trailers	X	Direct per Use	X	X	XXX	XXX	X	X	XXX	XXX	XXX	XXX	XXX	27
28		Total-Dock Operation	8111.12	-	779.03	X	3134.93	XXX	3134.93	.5076	XXX	XXX	XXX	2448.17	.1213	28
		IV TRAFFIC EXPENSES														
29	305	Rate Adjustment & Tariff Pub	289.30	Direct	XXX	XXX	XXX	289.30	289.30	.046	XXX	XXX	XXX	XXX	XXX	29
30		All other Traffic Expenses	1836.76	Direct	XXX	XXX	XXX	XXX	XXX	.2974	XXX	XXX	XXX	X	X	30
31		Total-Traffic Expenses	2126.06	-	XXX	XXX	XXX	289.30	289.30	.3434	XXX	XXX	XXX	X	X	31
		V GENERAL & ADMINISTRATIVE														
32	351	Sal. & Exp. General Officers	611.25	Fixed Cost-50%; Variable-50%	XXX	XXX	XXX	305.67	305.67	.0495	XXX	XXX	XXX	305.67	.0165	32
33	352	Sal. & Exp. General Office Clerks	1106.28	Fixed Cost-50%; Variable-50%	XXX	XXX	XXX	563.14	563.14	.0996	XXX	XXX	XXX	563.14	.0298	33
34	353	Accounting & Billing	914.64	Direct	XXX	XXX	XXX	914.64	914.64	.1481	XXX	XXX	XXX	XXX	XXX	34
35			656.94	Fixed Cost-50%; Variable-	XXX	XXX	XXX	656.94	656.94	.1063	XXX	XXX	XXX	656.94	.0331	35

U.S.M.C. DOCKET No. 655
EXHIBIT No.
WITNESS 1291

PORT OF STOCKTON

BREAKDOWN OF WHARF DEMURRAGE COSTS INTO

(1) The Fixed Costs per Ton (i.e., Receiving and Delivery Expense), and
(2) The Variable Expense (i.e., the Floor Space Costs and Overheads, both of which vary with the Period of Storage).

Schedule E
Sheet 2 of 2 sheets

Line No.	Acct. No.	ITEM	Expenses from Schedule B Column (h)	APPORTIONMENT FACTORS	(1) FIXED COSTS: LABOR HANDLING High Piling	LABOR HANDLING Other 1/	Checking	Non-Variable Ovh'd	Sub-total Cols. (f)+(g)+(h)	Cost/Ton Rmd. High Pile 2/	(2) VARIABLE COSTS: Floor Space Costs	Initial Space Cost/sq.ft. 3/	Adj'd. Space Cost/sq.ft./30 days 4/	Variable Overhead	Ovh'd Costs/Ton/30 da. 5/	Line No.
	(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)	(j)	(k)	(l)	(m) 4/	(n)	(o)	
		V GENERAL & ADMINISTRATIVE (Cont'd)														
36	360	Office Equipment.....	44.41	Fixed Cost-50%; Variable-50%	xxx	xxx	xxx	33.20	33.20	.0053	xxx	xxx	xxx	33.20	.0017	36
37		Office Space Costs.....	X	Fixed Cost-50%; Variable-50%	xxx	xxx	xxx	X	X	X	xxx	xxx	xxx	X	X	37
38		Return on Working Capital.....	120.00	Lines 4,28,31,32-37.	X	X	X	120.00	120.00	.0194	X	X	X	X	X	38
39		Total-General & Administrative.....	4132.46	-	X	X	X	2583.59	2583.59	.4183	X	X	X	154876	.0836	39
40		GRAND TOTAL EXPENSE, Excluding High Piling (Lines 4,8,28,31,39) 7/	33,662.69	-	xxx	X	313483	2872.89	6007.72	.9729	1319108	.5581	.0775	379721	.2049	40
41		High Piling Expense 8/.....	779.03	-	779.03	xxx	xxx	xxx	xxx	xxx	xxx	xxx	xxx	xxx	xxx	41
42		GRAND TOTAL EXPENSE, Including High Piling (Lines 40 and 41).....	34441.72	-	779.03	X	313483	2872.89	6007.72	.9729	1319108	.5581	.0775	379721	.2049	42
		(Statistical Items)	Item													
43		Total tons Received on Wharf Dem...	6178 V 4/		xxx	xxx	xxx	xxx	xxx	xxx	xxx	xxx	xxx	xxx	xxx	43
44		Total Ton-Months of Storage.....	24700 VE	-	xxx	xxx	xxx	xxx	xxx	xxx	xxx	xxx	xxx	xxx	xxx	44
45		Tons Receiving High Piling.....	4226	-	4226	xxx	xxx	xxx	xxx	xxx	xxx	xxx	xxx	xxx	xxx	45
46		Avg. Cost/Ton-High Piling 8/.....	.1843	-	.1843	xxx	xxx	xxx	xxx	xxx	xxx	xxx	xxx	xxx	xxx	46

Excludes bulk sugar

NOTE: Demurrage rates are fundamentally built up of two elements, the first being the initial receiving and delivery costs which are independent of the length of the storage period (herein referred to as the fixed costs), and the second being the variable costs which are proportional to the length of the storage period. (See Commission study, Chapter VIII). The first element includes the cost of checking to and from consignee, the cost of physical handling (i.e., high piling and breaking down, or, where no high piling is involved, at least the labor costs for moving, shifting, assembling), and certain minimum overhead costs for accounting, billing, etc. The second element includes the floor space costs, watchmen, insurance, and certain office overheads, all of which are in proportion to the length of time a shipment remains in storage. Where a shipment remains a short period, high piling is not warranted even though the space costs are increased thereby. On long time storage it becomes more economical to high pile as the saving in space costs offsets the labor expense in high piling. Some commodities, because of their nature, are never high piled. Others are high piled regularly. The operator should be in a position to determine for any given commodity which is the most efficient method of handling for any given period of storage. The formula develops the alternative costs for either one tier piling or high piling (recognizing the higher labor cost but reduced floor space cost for the latter as compared to the former).

Schedule E serves to develop the receiving and delivery costs (i.e., the fixed costs) per ton, the floor space costs per square foot per 30 days, and the variable overhead costs per ton per 30 days. There only remains to be obtained the square feet required per ton for the individual commodities for (a) one-tier piling, (b) high piling (see Commission study, page 98). With the above data available the cost for any given commodity for any length of storage period can be computed both with and without high piling. If one assumes that the commodity is high piled whenever it is economically justifiable to do so, the computation showing the lowest cost for any given storage period would be the relevant cost figure to use (see pages 100-110 of Commission study for illustrations of this analysis of demurrage costs).

1/ Includes all labor costs except high piling, i.e., assembling of broken lots honeycombed by partial deliveries, shifting of demurrage cargo blocked off by other tonnage, etc.

2/ Determined by dividing subtotal in column (i) (which excludes high piling costs) by total tons received on wharf demurrage, column (c), line 43.

3/ Divide column (k) by square feet of area assigned to wharf demurrage (see Schedule B, line 91, column (h)).

4/ The areas initially assigned to wharf demurrage embrace aisle space, working areas, waste space around piles, idle space during dull seasons, etc. The Commission study developed that the revenue producing area at principal terminals studied totalled only 60 per cent of entire space assigned to wharf demurrage (i.e., use factor = 60 per cent). Hence to obtain adjusted cost divide column (l) by 0.60. Divide again by 12 to reduce to a cost per revenue producing square foot per month (i.e., column (l) ÷ (0.60 x 12)).

5/ The unit of "tons per 30 days" or ton-months represents the total ton-days of demurrage divided by 30. Develop by special test or from billing records.

6/ Includes only checking costs which are jointly for the account of wharf demurrage and car loading or unloading, and which have been apportioned equally to each service.

7/ Minus High Piling Expense from line 41, column (c).

8/ Develop the expense for high piling per ton (including breaking the pile down) by dividing line 41, column (c) by the tons high piled during the accounting period, line 45, column (c). Or if tonnage data not available, develop cost per ton from special tests. Indicate method used: _____

EXHIBIT No. 140

DETERMINATION OF WHARF DEMURRAGE COST OF ENCINAL TERMINAL

BASED ON THE FORMULA OF

FORD K. EDWARDS

Prepared by Encinal Terminal
October 6, 1940.

[illegible] TERMINAL

SUMMARY OF
TOTAL COSTS AND UNIT COSTS FOR EACH TARIFF SERVICE PLUS A COMPARISON WITH THE CORRESPONDING REVENUES
(Based on Traffic Handled and Expenses Incurred During the Accounting Period)

Summary Schedule
Sheet 1 of 2 sheets

Nov 1, 1938 - Oct 31, 1939 - Nov 1, 1938 - Oct 31, 1939

Line No.	TARIFF SERVICES (a)	COSTS FROM (b)	ANNUAL COST Total (c)	ANNUAL COST Per Ton 1/ (d)	ANNUAL REVENUES Total (e)	ANNUAL REVENUES Per Ton 1/ (f)	Line No.
	I TERMINAL SERVICES						
	Dockage						
1	Total Annual Cost	Sched. B, Col. (e), line 86		XXX		XXX	1
2	Cost per "12-hour berth occupancy"	Sched. B, Col. (e), line 87		XXX		XXX	2
	Tolls						
3	a. Total-All Cargo	Sched. C, Col. (e), lines 37 & 39					3
4	b. Cargo Loaded or Discharged by Pipe Line	Sched. C, Cols. (e) & (f), line 37					4
5	c. Bulk Cargo Handled Direct to/from Rail Cars	Sched. C, Cols. (g) & (h), line 37					5
6	d. General Cargo	Sched. C, Cols. (i) & (j), line 37					6
	Service Charges (Clerking Cargo)						
7	a. Total-All Cargo	Sched. D, Col. (e), lines 34 & 36					7
8	b. Cargo Loaded or Discharged by Pipe Line	Sched. D, Cols. (e) & (f), line 34					8
9	c. Bulk Cargo Handled Direct to/from Rail Cars	Sched. D, Cols. (g) & (h), line 34					9
10	d. General Cargo Handled Direct to/from Rail Cars	Sched. D, Cols. (i) & (j), line 34					10
11	e. General Cargo Moving Through Sheds	Sched. D, Cols. (k) & (l), line 34					11
	Wharf Demurrage						
12	a. Total-All Cargo	Sched. E, Col. (e), line 42	59572.98	XXX	1428935	XXX	12
13	b. Fixed Costs Per Ton (average) 1. Total-Excluding High Piling	Sched. E, Col. (i), line 40	XXX	3365	XXX	XXX	13
14	2. High Piling Costs (average)	Sched. E, Col. (e), line 46	XXX	6802	XXX	XXX	14
15	c. Variable Costs 1. Overhead per ton per 30 days	Sched. E, Col. (o), line 40	XXX	1158 2/	XXX	XXX	15
16	2. Floor space costs per sq. ft. per 30 days	Sched. E, Col. (m), line 40	XXX	0576 2/	XXX	XXX	16
	Miscellaneous Terminal Services						
17	Car Loading	Sched. F, Col. (e), lines 18 & 19					17
18	Car Unloading	Sched. F, Col. (f), lines 18 & 19					18
19	Weighing	Sched. F, Col. (g), lines 18 & 19					19
20	Stencilling	Sched. F, Col. (h), lines 18 & 19		/hr.		/hr.	20
21	Recoopering	Sched. F, Col. (i), lines 18 & 19		/hr.		/hr.	21
22	Labor Sold (Cost Plus - Hourly Basis)	Sched. F, Col. (j), lines 18 & 19		/hr.		/hr.	22
23	Handling Lines	Sched. F, Col. (k), lines 18 & 19		/hr.		/hr.	23
24	Other	Sched. F, Col. (l), lines 18 & 19		/hr.		/hr.	24
25	Total Miscellaneous			XXX		XXX	25
	Rentals			Per Sq. Ft. Per 30 Days		Per Sq. Ft. Per 30 Days	
26	Steamship and Other Office Rentals 4/	Sched. B, Col. (j), line 92					26
27	Pier Rentals 5/	-	XXX	XXX		XXX	27
28	Land Rentals	6/					28
29	Total Rentals	-		XXX		XXX	29
30	**Total-Terminal Services** (Sum of lines 1, 3, 7, 12, 25, and 29)			XXX		XXX	30

ENGINE TERMINAL

CARRYING CHARGES ON WATERWAYS, STRUCTURES, AND OTHER PLANT FACILITIES

SEPARATED AS BETWEEN WATERWAYS, APRONS, SHEDS, AND OTHER AREAS AND FACILITIES

Schedule A
Sheet 1 of 1

Line No.	Acct. No. (a)	ITEM (b)	Expenses (c)	APPORTIONMENT FACTORS 1/ (d)	Water-ways (e)	APRONS Unit No. 1 (f)	APRONS Unit No. 2 (g)	TRANSIT SHEDS 2/ Unit No. 3 (h) A	TRANSIT SHEDS 2/ Unit No. 4 (i) C	Trackage Facilities 3/ (j)	Roadway and Truck Areas 3/ (k)	Other Areas and Facilities 4/ (l)	Line No.
		1 CARRYING CHARGES - WATERWAYS & STRUCTURES											
1	100	Superintendence		Accts. 101, 105, 106 and 110									1
2	102	Engineering		Acct. 101									2
3	103	Dredging		Direct		XXX	XXX	XXX	XXX	XXX	XXX	XXX	3
4	104	Maint. Wharves & Substructures		Direct 5/						XXX	XXX		4
5	105	Depr. Wharves & Substructures	3072.33	Direct 5/				2744.57	877.76	XXX	XXX		5
6	106	Maint. Transit Sheds	6310.21	Direct	XXX	XXX	XXX	2244.46	1268.46	XXX	XXX	715.59	6
7	107	Depr. Transit Sheds	9027.39	Direct	XXX	XXX	XXX	4677.43	7281.86	XXX	XXX	1871.55	7
8	108	Maint. Trackage Facilities		Direct	XXX	XXX	XXX	XXX	XXX		XXX	XXX	8
9	109	Depr. Trackage Facilities		Direct	XXX	XXX	XXX	XXX	XXX		XXX	XXX	9
10	110	Maint. Roadway & Truck Areas		Direct	XXX	XXX	XXX	XXX	XXX	XXX		XXX	10
11	111	Depr. Roadway & Truck Areas		Direct	XXX	XXX	XXX	XXX	XXX	XXX		XXX	11
12	112	Insurance on Structures 6/	3705.34	Direct, or Coverage	XXX			1243.45	1371.89	XXX	XXX		12
13	113	Maint. Fire Equipment		Floor Area of Structures	XXX					XXX	XXX		13
14	114	Depr. Fire Equipment	275.42	Floor Area of Structures	XXX			92.56	17.65	XXX	XXX		14
15	115	Stationery & Printing		Acct. 101									15
16	116-1	Taxes on Structures & Facilities	6315.69	Assessed Val. or Flr Area 7/	XXX			2700.00	1467.00			1648.69	16
17	117-1	Rentals Paid on Struct. & Fac.	475.00	Direct, or Floor Area	XXX							475.00	17
18		Return on Struct. & Fac. at 7 %	37319.97	Value, or Floor Area	XXX			12952.72	10759.56			3607.69	18
19		Total Carrying Chgs.-Structures	65981.90	-				27445.56	18835.88			9670.46	19
		I CARRYING CHARGES ON LAND											
20	116-2	Taxes on Land	958.62	Ground Area 8/				681.97	488.02			348.63	20
21	117-2	Rentals Paid on Land		Direct, or Ground Area									21
22		Return on Land at 7 %	9171.78	Ground Area				4500.65	3709.30			1461.43	22
23		Total Carrying Chgs - Land	18690.41	-				5181.07	3697.34			9811.05	23
24		GRAND TOTAL (Lines 19 and 23)	84642.31	-				47677.58	22533.22			19481.51	24

NOTE: The carrying charges, as the term is here used, includes maintenance, depreciation, insurance, taxes, and a return upon the investment. While this form provides for only two wharf units, as many sheets may be added to Schedule A (and the following schedules) as are necessary to account for all wharf and pier units pertinent to the study (see columns (f) and (g), and (h) and (i), respectively). If the straight line method of depreciation is used, compute the return upon the depreciated value of the property used and useful. If the sinking fund method of depreciation is used, compute the return upon the original cost of the property used and useful, but before depreciation.

1/ Apportionment factors on this and subsequent schedules should be used only in the absence of data permitting direct assignment. The distribution is intended to reflect as nearly as practicable the expense properly chargeable to each facility listed.

2/ The term "shed" is here intended to mean the superstructure plus that portion of the substructure which it covers. The remainder is assignable to aprons. A further subdivision of columns (h) and (i) to reflect the substructure and superstructure separately may be made, if desired, to facilitate the accumulation of the costs. The values should be combined for treatment in Schedule B.

3/ Do not include trackage or roadway facilities which are an integral part of the wharf structures. In such case the charges are assigned to the structure.

4/ Embraces all remaining areas used and useful in the provision of the port or terminal service such as fire stations, storage areas, shops, etc., but which are not directly revenue producing.

5/ Assign expense for fender line to waterways (for subsequent inclusion in dockage charges). Estimate on best basis available. Assign remaining expenses for wharves and substructure direct to apron and transit-shed areas, respectively. If direct distribution not available, allocate on basis of floor area in each (or per coverage in case of insurance).

6/ For insurance on cargo (in transit or demurrage) see Schedule B.

7/ Allocate in proportion to the assessed valuation of each structure. Where taxes are assignable to full units including substructure and shed, assign taxes to each on basis of original cost and allocate taxes on substructure to apron on basis of area.

8/ Allocate in proportion to the area upon which each facility rests, waterways, structures, roadways, etc.

[illegible] TERMINAL

SEPARATION OF EXPENSES BETWEEN DOCKAGE, TOLLS, SERVICE CHARGES, WHARF DEMURRAGE, ETC.

Schedule B
Sheet 1 of 5 sheets

Line No.	Acct. No.	ITEM	Expenses	APPORTIONMENT FACTORS 1/	Dockage 2/	Tolls 3/	Service Charges 4/	Wharf Demurrage 5/	Misc. Terminal Services 6/	OFFICES AND OTHER AREAS 7/ Shed Space	OFFICES AND OTHER AREAS 7/ Land Areas	Non-Terminal Operations 8/	Line No.
	(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)	(j)	(k)	(l)	
		I CARRYING CHARGES - WATERWAYS & STRUCTURES (from Sched. A line 19)											
		Waterways (Col. e)		Direct 9/		XXX	XXX	XXX	XXX	XXX	XXX		1
		Apron - Unit No. 1 (Col. f)		Use made 9/			XXX	XXX	XXX	XXX	XXX		2
		Apron - Unit No. 2 (Col. g)		Use made 9/			XXX	XXX	XXX	XXX	XXX		3
		Shed - Unit No. 2A (Col. h)	37446.56	Use made 9/			XXX	14269.04			XXX	XXX	4
		Shed - Unit No. 2C (Col. i)	18236.11	Use made 9/			XXX	17681.75			XXX	XXX	5
		Trackage Facilities (Col. j)		Tolls 100% 9/	XXX		XXX	XXX	XXX	XXX	XXX	XXX	6
		Roadway Areas (Col. k)		Tolls 100% 9/	XXX		XXX	XXX	XXX	XXX	XXX	XXX	7
		Other Facilities (Col. l)	9670.46	Direct 10/			XXX	1850.94					8
		Total Carrying Charges - Waterways & Structures (Lines 1-8 Incl.)	65951.90	-			XXX	16987.85					9
		I CARRYING CHARGES - LAND (from Sched. A line 24)											
		Land - Waterways (Col. e)		Direct 9/		XXX	XXX	XXX	XXX	XXX	XXX		10
		Land - Apron Unit No. 1 (col. f)		Use made 9/			XXX	XXX	XXX	XXX	XXX		11
		Land - Apron Unit No. 2 (Col. g)		Use made 9/			XXX	XXX	XXX	XXX	XXX		12
		Land - Shed Unit No. 2A (col. h)	5147.07	Use made 9/			XXX	705.71			XXX	XXX	13
		Land - Shed Unit No. 2C (col. i)	3697.34	Use made 9/			XXX	714.94			XXX	XXX	14
		Land - Trackage Facilities (col. j)		Tolls 100% 9/	XXX		XXX	XXX	XXX	XXX	XXX	XXX	15
		Land - Road Areas (col. k)		Tolls 100% 9/	XXX		XXX	XXX	XXX	XXX	XXX	XXX	16
		Land - Other Facilities (col. l)	9811.05	Direct 10/			XXX	567.25					17
		Total Charges - Land, (Lines 10-17, inclusive)	18690.41	-			XXX	1855.00					18
		II DOCK OPERATION											
151		Superintendence	1764.58	Accts. 152-182, incl.				705.81					19
		(Clerking)											
152-1		Checking Cargo (to/from vessel) 11/		Direct	XXX	XXX		XXX	XXX	XXX	XXX	XXX	20
152-2		Checking Cargo (to/from shipper) 11/		Direct	XXX	XXX		XXX	XXX	XXX	XXX	XXX	21
152-3		Checking Cargo (to/from demurrage) 12/	3135.57	Direct	XXX	XXX	XXX	3135.57	XXX	XXX	XXX	XXX	22
152-4		Checking (Acct. car loading)		Direct 13/	XXX	XXX				XXX	XXX	XXX	23
152-5		Checking (Acct. Car Unloading)		Direct 13/	XXX	XXX				XXX	XXX	XXX	24
152-6		Checking - Other		Direct	XXX	XXX				XXX	XXX	XXX	25
153		Making out Ship's Papers 14/		Direct	XXX	XXX		XXX	XXX	XXX	XXX	XXX	26
		(Dock Labor)											
171		Assembling Cargo for Vessel's acct.		Direct	XXX	XXX		XXX	XXX	XXX	XXX	XXX	27
172		Car loading		Direct	XXX	XXX	XXX	XXX		XXX	XXX	XXX	28
173		Car Unloading		Direct	XXX	XXX	XXX	XXX		XXX	XXX	XXX	29
174		Handling & High Piling (Acct. Demurrage)	1780.72	Direct	XXX	XXX	XXX	1780.24	XXX	XXX	XXX	XXX	30
175		Handling Lines		Direct	XXX	XXX	XXX	XXX		XXX	XXX	XXX	31
176		Weighing		Direct	XXX	XXX	XXX	XXX		XXX	XXX	XXX	32
177		Stenciling		Direct	XXX	XXX	XXX	XXX		XXX	XXX	XXX	33
179		Recoopering		Direct	XXX	XXX	XXX	XXX		XXX	XXX	XXX	34
17X		Misc. Labor (for which cost plus charge assessed)		Direct	XXX	XXX	XXX	XXX		XXX	XXX	XXX	35

ENCINAL TERMINAL

SEPARATION OF EXPENSES BETWEEN DOCKAGE, TOLLS, SERVICE CHARGES, WHARF DEMURRAGE, ETC.

Schedule B
Sheet 2 of 5 sheets

Line No.	Acct. No.	ITEM	Expenses	APPORTIONMENT FACTORS 1/	Dockage 2/	Tolls 3/	Service Charges 4/	Wharf Demurrage 5/	Misc. Terminal Services 6/	OFFICES AND OTHER AREAS 7/ Shed Space	OFFICES AND OTHER AREAS 7/ Land Areas	Non-Terminal Operations 8/	Line No.
	(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)	(j)	(k)	(l)	
		II DOCK OPERATION (Continued)											
		(Misc. Expenses)											
181		Cleaning sheds & docks	7353.98	Cleaning Requirements 15/	xxx	xxx		117.70			xxx	xxx	36
182		Watchmen	7810.48	Areas 16/				1663.17					37
183		Power for dock use		Consumption	xxx	xxx		—			xxx	xxx	38
184		Power for sale		Direct	xxx	xxx	xxx	xxx	xxx	xxx	xxx		39
185		Water for dock use	1359.96	Consumption	xxx	xxx		81.60			xxx	xxx	40
186		Water for sale		Direct	xxx	xxx	xxx	xxx	xxx	xxx	xxx		41
187		Claims	3772.53	Direct				169.63		xxx	xxx	xxx	42
188		Car Demurrage		Direct 17/	xxx		xxx	xxx		xxx	xxx	xxx	43
189		Absorptions	7417.90	18/				911.63		xxx	xxx	xxx	44
190		Insurance, Cargo		Direct	xxx	xxx				xxx	xxx	xxx	45
191		Insurance, Compensation	7346.43	Labor allocation				715.87		xxx	xxx		46
192		Telephone	1171.33	Acct. 151				178.67					47
193		Stationery & Printing		Acct. 151									48
194		Taxes, Payroll	10968.06	Accts. 152-182, incl.				936.94					49
		(Dock Equipment)											
201		Car loading-Equipment (Supplies, repairs, depr.)		Direct	xxx	xxx	xxx	xxx		xxx	xxx	xxx	50
202		Weighing Equipment (Supplies, repairs, depr.)		Direct	xxx	xxx	xxx	xxx		xxx	xxx	xxx	51
203		High piling Equipment (Supplies, repairs, depr.)	4535.17	Direct	xxx	xxx		945.88	xxx	xxx	xxx	xxx	52
204		Tractors & Trailers (Supplies, repairs, depr.)	7155.83	Direct	xxx	xxx		478.37		xxx	xxx	xxx	53
		(Return at 7 % on Depreciated Value - Dock Equipment)											
		Car Loading Equipment		Direct	xxx	xxx	xxx	xxx		xxx	xxx	xxx	54
		Weighing Equipment		Direct	xxx	xxx	xxx	xxx		xxx	xxx	xxx	55
		High Piling Equipment	389.24	Relative Use	xxx	xxx		795.92	xxx	xxx	xxx	xxx	56
		Tractors & Trailers Equipment	2647.29	Relative Use	xxx	xxx		374.34		xxx	xxx	xxx	57
		Total Dock Operation (Lines 19-57, inclusive)	76339.49	-				7738.29					58
		III OTHER PORT OPERATIONS											
		Warehousing		Direct	xxx	xxx	xxx	xxx	xxx	xxx	xxx		59
		Producing Power sold		Direct	xxx	xxx	xxx	xxx	xxx	xxx	xxx		60
		Grain Elevators		Direct	xxx	xxx	xxx	xxx	xxx	xxx	xxx		61
		Stevedoring		Direct	xxx	xxx	xxx	xxx	xxx	xxx	xxx		62
		Terminal Railroad Operations		Direct	xxx	xxx	xxx	xxx	xxx	xxx	xxx		63
		Other Operations		Direct	xxx	xxx	xxx	xxx	xxx	xxx	xxx		64
		Total-Other Port Operations (Lines 59-64, inclusive)		-	xxx	xxx	xxx	xxx	xxx	xxx	xxx		65

(See Sheets 4 and 5 for footnotes).

ENCINAL TERMINAL

SEPARATION OF EXPENSES BETWEEN DOCKAGE, TOLLS, SERVICE CHARGES, WHARF DEMURRAGE, ETC.

Schedule B
Sheet 3 of 5 sheets

Acct. No. (a)	ITEM (b)	Expenses (c)	APPORTIONMENT FACTORS 1/ (d)	Dockage 2/ (e)	Tolls 3/ (f)	Service Charges 4/ (g)	Wharf Demurrage 5/ (h)	Misc. Terminal Services 6/ (i)	OFFICES AND OTHER AREAS 7/ Shed Space (j)	OFFICES AND OTHER AREAS 7/ Land Areas (k)	Non-Terminal Operations 8/ (l)	Line No.
	IV TRAFFIC EXPENSES 24/											
	Superintendence		Lines 9, 18, 58 (65) 24/						XXX	XXX		66
	Solicitation	14990.00	Lines 9, 18, 58 (65)				764 49		XXX	XXX		67
	Rate Adjustment & Tariff Pub		Lines 9, 18, 58 (65)						XXX	XXX		68
	Dues & Subscriptions	221.00	Lines 9, 18, 58 (65)				16 98		XXX	XXX		69
	Stationery & Printing		Lines 9, 18, 58 (65)						XXX	XXX		70
	Other Traffic Expense	9116.63	Lines 9, 18, 58 (65)				464 95		XXX	XXX		71
	Total Traffic Expenses (Lines 66-71, inclusive)	24439.63	-				1746 42		XXX	XXX		72
	V GENERAL & ADMINISTRATIVE 24/											
	Salaries & Exp. Gen'l Officers	31158.00	Lines 9, 18, 58 (65) 24/				4774.53		XXX	XXX		73
	Salaries & Exp. Gen'l Ofc Clks	9394.00	Dir., or Lines 9,18,58(65)19/				500.10		XXX	XXX		74
	Accounting & Billing	10790.00	Direct, or Acct. 351				909.54		XXX	XXX		75
	Gen'l Ofc Supplies & Expenses	1812.28	Line 73				152.63		XXX	XXX		76
	Legal Expenses	376.00	Lines 9, 18, 58 (65)				114.50		XXX	XXX		77
	Pensions & Relief	450.00	Labor Distribution				9.00		XXX	XXX		78
	Insurance, general	7817.54	Direct or Lines 9,18,58(65)				327.26		XXX	XXX		79
	Stationery & Printing	1916.42	Lines 9, 18, 58 (65)				147.49		XXX	XXX		80
	Taxes - Office Payroll	3456.02	Accts. 351-352				318.96		XXX	XXX		81
	Ofc Equipt. (Carrying Chgs) 23/	2017.01	Accts. 351-352				185.66		XXX	XXX		82
	Ofc Space Costs (from line 92)		Accts. 351-352						XXX	XXX		83
	Return on Working Capital 25/	1400.00	Lines 9, 58 (65)				173.70		XXX	XXX		84
	Total-General & Administrative (Lines 73-84, inclusive)	85188.31	-				11095.70		XXX	XXX		85
	GRAND TOTAL - EXPENSES (Lines 9,18,58,65,72 and 85)	278009.72	-				59857 98					86
	Development of Average Unit Cost 20/											
	Dockage cost per "12-hr berth occupancy" (Line 86 ÷ Line 88)		-		XXX	XXX	XXX	XXX	XXX	XXX	XXX	87
	Statistical Items											
	Vessel "12-hr berth occupancies" 21/		-		XXX	XXX	XXX	XXX	XXX	XXX	XXX	88
	Assignment of Shed Area in Square Feet											
	Unit No. 2.B		- 118.92 43100							XXX		89
	Unit No. 2.C		- 84583 4810							XXX		90
	Total (lines 89,90)		70277S 47910									91
	Cost Per Square foot-Offices & Other Areas (Lines 9,18,36,37) ÷ Line 91 Col.(j)		-	XXX	XXX	XXX	XXX	XXX		XXX	XXX	92
	Ofc Space Costs 22/ (Area x line 92, col.(i))		-	XXX	XXX	XXX	XXX	XXX		XXX	XXX	93

(See Sheets 4 and 5 for footnotes).

pportionment factors of this and subsequent schedules should be used only in the esence of data permitting direct assignment. The distribution is intended to flect as nearly as practicable the expense properly chargeable to each service isted.

r purposes of cost allocations herein the term dockage is defined as follows: he charge assessed against a vessel and/or watercraft for docking at a wharf, er, or seawall structure, or moored to a vessel so docked, or coming within a lip, channel, or basin." In other words, dockage is the charge against the ves- l for the use of the wharf for purposes of loading and/or discharging its cargo. e vessel is charged with that wharf space necessary for the physical loading or scharging of its cargo. Such space extends from the fender line up to that int at which the vessel's agents (stevedores) physically take possession of or p the cargo, (i.e., up to but not including the point of rest).

der certain circumstances the dockage costs, as herein determined, are assessed ainst the vessel (in whole or in part) in the form of pier rentals or space ntals. Such rentals may increase the burden laid against the vessel and cor- spondingly lighten the direct burden against the cargo. The reverse may be true. e formula, as here set up, however, merely seeks to determine what the vessel d the cargo ought to pay purely from a cost of service standpoint based upon the spective use each makes of the facility. The ultimate distribution of these sts against the respective users of the service in the form of tariff charges not a matter of concern to the cost analyst in applying this Formula.

r purposes of cost allocations herein the term tolls is defined as follows: "A ll is the charge for cargo conveyed on, over, or through a terminal facility, or aded or discharged while the vessel is berthed at a terminal facility." In her words, the toll is the price paid by the cargo for the use of wharf facili- s, i.e., sheds, roadways, trackage facilities, etc. The cargo is assumed to mpensate in the form of toll for the carrying charges upon the facilities up to point where the vessel's stevedores physically take possession of the goods r loading purposes, i.e., up to and including point of rest (but excluding as devoted to wharf demurrage or shipside storage).

rvice Charge items embrace clerical, checking and related services rendered for account of the vessel. Private terminals may embrace items which are dif- ent from those included by the vessel operators themselves when the latter, accounting purposes, segregate these expenses. At the private terminals on Francisco Bay the term service charge, as defined in their tariffs, is a rge against the vessel for the rendering of the following services:

(1) Arranging berth for vessel.
(2) Arranging cargo space on wharf.
(3) Checking cargo to or from vessel as required.
(4) Receiving outbound cargo from shipper.
(5) Delivering inbound cargo to consignee.
(6) Preparing manifest or tags covering cargo loaded aboard vessel.
(7) Preparing "over," "short," and "damage" reports.
(8) Ordering cars.
(9) Giving information to shippers and consignees regarding cargo, sailing and arrival dates of vessels.
(10) Lighting wharf.

above definition has been used for purposes of making the cost allocations rein.

5/ Wharf demurrage is defined as that charge accruing upon the cargo left in the possession of the terminal beyond the free time period. The floor space assignable to wharf demurrage (or shipside storage) is based on tests to develop the annual average areas occupied, or held available for such occupancy.

6/ Embraces car loading, car unloading, weighing, stenciling, recoopering, labor sold on cost plus basis, handling lines, etc. Charge these items with the space devoted to the performance of stenciling, recoopering, weighing, etc., and to the storage of equipment used in car loading, unloading, stenciling, weighing, etc.

7/ Embraces remaining shed or open areas used for the general offices or rented to steamship companies, stevedoring companies, outside stenciling companies, etc. Embraces only non-cargo areas.

8/ Assign to Non-Terminal Operations, column (1), any charges not assignable to the revenue producing terminal services listed. Non-terminal operations include stevedoring, terminal railway operations, etc.

9/ The apportionment of the carrying charges for the waterways, aprons, sheds and other parts of the wharf structure, must rest (from the standpoint of cost finding) upon the relative use made of such facility by the vessel on the one hand and the cargo on the other. The principles involved in such separation are too involved for reproduction here. (See Final Report in C.R.C. study, Case 4090, dated May 16, 1936, pages 41-43). The separation made will vary with the type and uses made of the individual structures. The Commission report lists five illustrations of cost separation. The results of illustration No. 5 follow as an example:

Carrying Charges (a)	Vessel Dockage (b)	CARGO Tolls (c)	CARGO Demurrage (d)	Misc. Terminal Services (e)	Offices & Rental Areas (f)	Non-Terminal Operations (g)
a. Water Areas	100%	-	-	-	-	-
b. Apron-Structure & Track	60%	40%	-	-	-	-
c. Apron-Land	87½%	12½%	-	-	-	-
d. Transit Shed, substructure, superstructure & land	12%	68%	20%	-	-	-
e. Remaining Term. Trackage & Roadways	-	100%	-	-	-	-

The above separation was based on several factors not here listed and represents an oversimplification as no charges have been made for offices and rental areas, etc. However, with the fundamental principles stated as to the portions of the facility which are properly chargeable against the vessel and the portions properly chargeable against the cargo, the breakdown for each wharf or pier is readily obtainable. In the Commission study a breakdown was developed separately for each wharf unit at each of the terminal properties subject to the investigation. It is obvious that the fundamental statement of principles for the separation of the charges between vessel and cargo are all-important.

10/ Assign to Tolls, column (f), the charges upon special facilities or areas utilized by pipe lines in the handling of bulk cargoes, including a portion of the substructure supporting the pipe lines. Assign open areas used for bulk storage to wharf demurrage, column (h).

11/ The checking is for the account of the vessel. Hence cost is included in service charge assessed against vessel.

ENGINAL TERMINAL

BREAKDOWN OF WHARF DEMURRAGE COSTS INTO
(1) The Fixed Costs per Ton (i.e., Receiving and Delivery Expense), and
(2) The Variable Expense (i.e., the Floor Space Costs and Overheads, both of which vary with the Period of Storage).

Schedule E
Sheet 1 of 2 sheets

Line No.	Acct. No.	ITEM	Expenses from Schedule B Column (h)	APPORTIONMENT FACTORS	(1) FIXED COSTS						(2) VARIABLE COSTS					Line No.
					LABOR HANDLING		Checking	Non-Variable Ovh'd	Sub-total Cols. (f)+(g)+(h)	Cost/Ton Excl. High Pile 2/	Floor Space Costs	Initial Space Cost/sq.ft. 3/	Adj'd. Space Cost/sq.ft./ 2nd days	Variable Overhead	Ad'd Costs/Ton/30 da. 5/	
					High Piling	Other 1/										
	(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)	(j)	(k)	(l)	(m) 4/	(n)	(o)	
		I CARRYING CHARGES-STRUCTURES														
1		Shed Unit No. 1-A	14069.06	Direct	xxx	xxx	xxx	xxx	xxx	xxx	14069.06	.7937	.0408	xxx	xxx	1
2		Shed Unit No. 1-B	1768.75	Direct	xxx	xxx	xxx	xxx	xxx	xxx	1768.75	.0765	.0037	xxx	xxx	2
3		Other Facilities	1650.14	Direct	xxx	xxx	xxx	xxx	xxx	xxx	1650.14	.0344	.0048	xxx	xxx	3
4		Total-Carrying Charges-Structures	16987.95	-	xxx	xxx	xxx	xxx	xxx	xxx	16987.95	.3546	.0493	xxx	xxx	4
		I CARRYING CHARGES-LAND														
5		Shed Unit No. 1-A	7057.71	Direct	xxx	xxx	xxx	xxx	xxx	xxx	7057.71	.0479	.0059	xxx	xxx	5
6		Shed Unit No. 1-B	779.94	Direct	xxx	xxx	xxx	xxx	xxx	xxx	779.94	.0084	.0007	xxx	xxx	6
7		Other Facilities	567.35	Direct	xxx	xxx	xxx	xxx	xxx	xxx	567.35	.0119	.0016	xxx	xxx	7
8		Total-Carrying Charges-Land	7856.00	-	xxx	xxx	xxx	xxx	xxx	xxx	7856.00	.0596	.0082	xxx	xxx	8
		II DOCK OPERATION														
9	151	Superintendence	705.81	Acct. 152-182 incl.	596.42	46.72	97.41	xxx	144.13	.0044	xxx	xxx	xxx	55.26	.0007	9
10	152-3	Checking (to/from Demurrage)	3185.57	Direct	xxx	xxx	3185.57	xxx	3185.57	.0950	xxx	xxx	xxx	xxx	xxx	10
11	152-4	Checking (Acct. Car Loading) 6/		Direct	xxx	xxx		xxx			xxx	xxx	xxx	xxx	xxx	11
12	152-5	Checking (Acct. Car Unloading) 6/		Direct	xxx	xxx		xxx			xxx	xxx	xxx	xxx	xxx	12
13	174	Handling & High Pil.(a) High Piling	16299.47	Direct	16299.47	xxx	xxx	xxx	xxx		xxx	xxx	xxx	xxx	xxx	13
14		(b) Other	1501.77	Direct	xxx	1501.77	xxx	xxx	1501.77	.0455	xxx	xxx	xxx	xxx	xxx	14
15	181	Cleaning Sheds	117.70	Direct	xxx	xxx	xxx	xxx	xxx		xxx	xxx	xxx	117.70	.0015	15
16	182	Watchmen	1663.12	Direct	xxx	xxx	xxx	xxx	xxx		xxx	xxx	xxx	1663.12	.0214	16
17	183	Power for dock use		Direct	xxx	xxx	xxx	xxx	xxx		xxx	xxx	xxx	—		17
18	185	Water for dock use	81.60	Direct	xxx	xxx	xxx	xxx	xxx		xxx	xxx	xxx	81.60	.0011	18
19	187	Claims	163.63	Direct	xxx	xxx	xxx	xxx	xxx		xxx	xxx	xxx	163.63	.0021	19
20	189	Absorptions	381.63	Direct	xxx	xxx	xxx	xxx	xxx		xxx	xxx	xxx	381.63	.0049	20
21	190	Insurance, Cargo		Direct	xxx	xxx	xxx	xxx	xxx		xxx	xxx	xxx			21
22	191	Insurance, Compensation	215.87	Accts. 152-182, incl.	150.88	14.49	49.79	xxx	64.28	.0013	xxx	xxx	xxx	16.91	.0002	22
23	192	Telephone	178.67	Direct	xxx	xxx	xxx	xxx	xxx		xxx	xxx	xxx	178.67	.0023	23
24	193	Stationery & Printing		Direct	xxx	xxx	xxx	xxx	xxx		xxx	xxx	xxx			24
25	194	Taxes, Payroll	936.94	Accts. 152-182, incl.	677.75	64.01	179.30	xxx	191.32	.0058	xxx	xxx	xxx	73.87	.0009	25
26	203	High Piling Equipment	1181.80	Direct	xxx	xxx	xxx	xxx	xxx		xxx	xxx	xxx	xxx	xxx	26
27	204	Tractors & Trailers	874.71	Direct per Use	719.15	105.56	xxx	xxx	105.56	.0032	xxx	xxx	xxx	xxx	xxx	27
28		Total-Dock Operation	27388.79	-	19533.97	1730.34	3394.07	xxx	5124.41	.1552	xxx	xxx	xxx	2731.89	.0351	28
		IV TRAFFIC EXPENSES														
303		Rate Adjustment & Tariff Pub		Direct	xxx	xxx	xxx				xxx	xxx	xxx	xxx	xxx	29
		All other Traffic Expenses	1746.42	Direct	xxx	xxx	xxx	xxx	xxx		xxx	xxx	xxx	1746.42	.0160	30
		Total-Traffic Expenses	1746.42	-	xxx	xxx	xxx				xxx	xxx	xxx	1746.42	.0160	31
		V. GENERAL & ADMINISTRATIVE														
351		Sal. & Exp. General Officers	2274.53	Fixed Cost-50%; Variable-50%	xxx	xxx	xxx	1137.27	1137.27	.0344	xxx	xxx	xxx	1137.26	.0146	32
352		Sal. & Exp. General Office Clerks	5100.10	Fixed Cost-50%; Variable-50%	xxx	xxx	xxx	2550.05	2550.05	.0773	xxx	xxx	xxx	2550.05	.0328	33
353		Accounting & Billing	949.52	Direct	xxx	xxx	xxx	949.52	949.52	.0288	xxx	xxx	xxx	xxx	xxx	34
351-59		Other General & Administrative	2512.31	Fixed Cost-50%; Variable-50%	xxx	xxx	xxx	1256.16	1256.16	.0381	xxx	xxx	xxx	1256.15	.0162	35

ENCINAL TERMINAL

BREAKDOWN OF WHARF DEMURRAGE COSTS INTO
(1) The Fixed Costs per Ton (i.e., Receiving and Delivery Expense), and
(2) The Variable Expense (i.e., the Floor Space Costs and Overheads, both of which vary with the Period of Storage).

Schedule E
Sheet 2 of 2 sheets

Line No.	Acct. No.	ITEM	Expenses from Schedule B Column (h)	APPORTIONMENT FACTORS	(1) FIXED COSTS: LABOR HANDLING High Piling	LABOR HANDLING Other 1/	Checking	Non-Variable Ovh'd	Sub-total Cols. (f)+(g)+(h)	Cost/Ton Excl. High Pil. 2/	(2) VARIABLE COSTS: Floor Space Costs	Initial Space Cost/sq.ft. 3/	Adj'd. Space Cost/sq.ft./30 days 4/	Variable Overhead	Ovh'd Costs/Ton/30 da. 5/	Line No.
	(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)	(j)	(k)	(l)	(m) 4/	(n)	(o)	
		V GENERAL & ADMINISTRATIVE (Cont'd)														
	360	Office Equipment	135.66	Fixed Cost-50%; Variable-50%	XXX	XXX	XXX	67.83	67.83	.0070	XXX	XXX	XXX	67.83	.0069	36
		Office Space Costs		Fixed Cost-50%; Variable-50%	XXX	XXX	XXX				XXX	XXX	XXX			37
		Return on Working Capital	173.70	Lines 4,28,31,32-37.	42.53	3.77	7.38	17.97	74.17	.0007	36.99	.0008	.0001	19.54	.0023	38
		Total-General & Administrative	11095.32	-	42.53	3.77	7.38	5973.80	5984.95	.1813	36.99	.0008	.0001	5030.25	.0647	39
		GRAND TOTAL EXPENSE, Excluding High Piling (Lines 4,8,28,31,39) 7/	39986.48	-	XXX	1734.13	3399.45	5973.80	11107.38	.3365	19839.24	4150	.0576	8009.16	.1158	40
		High Piling Expense 8/	19576.50	-	19576.50	XXX	XXX	XXX	XXX	XXX	XXX	XXX	XXX	XXX	XXX	41
		GRAND TOTAL EXPENSE, Including High Piling (Lines 40 and 41)	59572.98	-	19576.50	1734.13	3399.45	5973.80	11107.38	.3365	19839.24	4150	.0576	8009.16	.1158	42
		(Statistical Items)	Item													
		Total tons Received on Wharf Dem.	33006	-	XXX	XXX	XXX	XXX	XXX	XXX	XXX	XXX	XXX	XXX	XXX	43
		Total Ton-Months of Storage	77773	-	XXX	XXX	XXX	XXX	XXX	XXX	XXX	XXX	XXX	XXX	XXX	44
		Tons Receiving High Piling	27782	-	27782	XXX	XXX	XXX	XXX	XXX	XXX	XXX	XXX	XXX	XXX	45
		Avg. Cost/Ton-High Piling 8/	.70424	-	.70424	XXX	XXX	XXX	XXX	XXX	XXX	XXX	XXX	XXX	XXX	46

Note: Demurrage rates are fundamentally built up of two elements, the first being the initial receiving and delivery costs which are independent of the length of the storage period (herein referred to as the fixed costs), and the second being the variable costs which are proportional to the length of the storage period. (See Commission study, Chapter VIII). The first element includes the cost of checking to and from consignee, the cost of physical handling (i.e., high piling and breaking down, or, where no high piling is involved, at least the labor costs for moving, shifting, assembling), and certain minimum overhead costs for accounting, billing, etc. The second element includes the floor space costs, watchmen, insurance, and certain office overheads, all of which are in proportion to the length of time a shipment remains in storage. Where a shipment remains a short period, high piling is not warranted even though the space costs are increased thereby. On long time storage it becomes more economical to high pile as the saving in space costs offsets the labor expense in high piling. Some commodities, because of their nature, are never high piled. Others are high piled regularly. The operator should be in a position to determine for any given commodity which is the most efficient method of handling for any given period of storage. The formula develops the alternative costs for either one tier piling or high piling (recognizing the higher labor cost but reduced floor space cost for the latter as compared to the former).

Schedule E serves to develop the receiving and delivery costs (i.e., the fixed costs) per ton, the floor space costs per square foot per 30 days, and the variable overhead costs per ton per 30 days. There only remains to be obtained the square feet required per ton for the individual commodities for (a) one-tier piling, (b) high piling (see Commission study, page 98). With the above data available the cost for any given commodity for any length of storage period can be computed both with and without high piling. If one assumes that the commodity is high piled whenever it is economically justifiable to do so, the computation showing the lowest cost for any given storage period would be the relevant cost figure to use (see pages 100-110 of Commission study for illustrations of this analysis of demurrage costs).

1/ Includes all labor costs except high piling, i.e., assembling of broken lots honeycombed by partial deliveries, shifting of demurrage cargo blocked off by other tonnage, etc.

2/ Determined by dividing subtotal in column (i) (which excludes high piling costs) by total tons received on wharf demurrage, column (c), line 43.

3/ Divide column (k) by square feet of area assigned to wharf demurrage (see Schedule B, line 91, column (h)).

4/ The areas initially assigned to wharf demurrage embrace aisle space, working areas, waste space around piles, idle space during dull seasons, etc. The Commission study developed that the revenue producing area at principal terminals studied totalled only 60 per cent of entire space assigned to wharf demurrage (i.e., use factor = 60 per cent). Hence to obtain adjusted cost divide column (1) by 0.60. Divide again by 12 to reduce to a cost per revenue producing square foot per month (i.e., column (1) ÷ (0.60 x 12)).

5/ The unit of "tons per 30 days" or ton-months represents the total ton-days of demurrage divided by 30. Develop by special test or from billing records.

6/ Includes only checking costs which are jointly for the account of wharf demurrage and car loading or unloading, and which have been apportioned equally to each services.

7/ Minus High Piling Expense from line 41, column (c).

8/ Develop the expense for high piling per ton (including breaking the pile down) by dividing line 41, column (c) by the tons high piled during the accounting period, line 45, column (c). Or if tonnage data not available, develop cost per ton from special tests. Indicate method used: _____

EXHIBIT No. 153

WAREHOUSE RECEIPT NO. 795

PORT OF OAKLAND

GROVE STREET PIER
OAKLAND, CALIFORNIA

This is to Certify, that we have received for storage in _____

_____, Oakland, California, for the account of _____ Ex _____ in apparent good order, except as noted hereon (contents, condition and quality unknown), the following described property, subject to all the terms and conditions contained herein and on the reverse hereof, such property to be delivered to _____, or order. upon the payment of all storage, tolls, unloading and other charges and the surrender of this Warehouse Receipt properly endorsed.

NUMBER	PACKAGES	SAID TO BE OR CONTAIN	MARKS

NEGOTIABLE

NUMBER	PACKAGES	SAID TO BE OR CONTAIN	MARKS
		NEGOTIABLE	

Lot No. _____

Tolls @ _____ per _____

Unloading @ _____ per _____

Storage @ _____ per _____ per _____ beginning _____ 193__

Advances have been made and liability incurred on such goods in the amount of $ _____

CITY OF OAKLAND

claims a lien for all lawful charges for storage and preservation of the goods, also for all lawful claims for money advanced, interest, transportation, labor, weighing, coopering, and other charges and expenses in relation to such goods.

BOARD OF PORT COMMISSIONERS

By _____

Superintendent of

_____

This document does not become a receipt until countersigned by the Secretary **or Assistant Secretary** of the Board of Port Commissioners of the City of Oakland, whose office is at Grove Street Pier, **Oakland, California.**

Countersigned by _____

Secretary or Assistant Secretary of the Board of Port Commissioners, City of Oakland

2589

No delivery of goods specified upon this receipt will be made unless written order is accompanied by this Warehouse Receipt properly endorsed.

ENDORSE HERE

The goods mentioned below are hereby released from this receipt for delivery from storage. The unreleased balance of the goods is subject to a lien for unpaid charges and advances on the released portion.

DATE	QUANTITY RELEASED	SIGNATURE	QUANTITY DUE ON RECEIPT

[illegible] AND CONDITIONS

The goods mentioned below are hereby released from this receipt for delivery from storage. The unreleased balance of the goods is subject to a lien for unpaid charges and advances on the released portion.

DATE	QUANTITY RELEASED	SIGNATURE	QUANTITY DUE ON RECEIPT

TERMS AND CONDITIONS

These goods are stored and handled subject to the rules, regulations, rates, charges and tariffs of the City of Oakland, now in force, or as may hereafter be adopted by the Board of Port Commissioners.

Rates do not include fire or other insurance.

The obligation of the City of Oakland shall be only to exercise that degree of care in the safe-keeping of said goods which a reasonably careful man would exercise in regard to similar goods of his own.

Goods in Bonded Warehouses are subject to all Federal Government Regulations and cannot be delivered without the authority of the Collector of Customs.

No responsibility will be assumed for loss or error occasioned by taking orders by telephone.

2590

Form 53 1000-8-36

WAREHOUSE RECEIPT No. C 1703

PORT OF OAKLAND

GROVE STREET PIER

OAKLAND, CALIFORNIA

_____ 193____

This is to Certify, that we have received from _____

for storage in _____, Oakland, California, for the

account of _____ Ex _____

in apparent good order, except as noted herein (contents, condition and quality unknown), the following described property, subject to all the terms and conditions contained herein and on the reverse hereof, such property to be delivered upon the payment of all storage, tolls, unloading and other charges, and upon the written order of the person to whom this receipt is issued.

NUMBER	PACKAGES	SAID TO BE OR CONTAIN	MARKS

NON-NEGOTIABLE

NUMBER	PACKAGES	SAID TO BE OR CONTAIN	MARKS
		NON-NEGOTIABLE	

Lot No. _____

Tolls @ _____ per _____

Unloading @ _____ per _____

Storage, beginning _____ 193__ @

_____

_____

_____

_____

_____

_____

Advances have been made and liability incurred on such goods in the amount of $ _____

CITY OF OAKLAND

claims a lien for all lawful charges for storage and preservation of the goods, also for all lawful claims for money advanced, interest, transportation, labor, weighing, cooperage, and other charges and expenses in relation to such goods.

BOARD OF PORT COMMISSIONERS

By _____

Superintendent of

_____

This document does not become a receipt until countersigned by the Secretary or Assistant Secretary of the Board of Port Commissioners of the City of Oakland, whose office is at Grove Street Pier, Oakland, California.

Approved by _____
Traffic Manager

Countersigned by _____
Secretary or Assistant Secretary of the Board of Port Commissioners, City of Oakland

2591

TERMS AND CONDITIONS

These goods are stored and handled subject to the rules, regulations, rates, charges and tariffs of the City of Oakland, now in force, or as may hereafter be adopted by the Board of Port Commissioners.

Rates do not include fire or other insurance.

The obligation of the City of Oakland shall be only to exercise that degree of care in the safe-keeping of said goods which a reasonably careful man would exercise in regard to similar goods of his own.

Goods in Bonded Warehouses are subject to all Federal Government Regulations and cannot be delivered without the authority of the Collector of Customs.

No responsibility will be assumed for loss or error occasioned by taking orders by telephone.

Transfers of merchandise are **NOT COMPLETE** unless made on the books of the Port of Oakland

STORER'S RECORD

QUANTITY RELEASED	DATE	FOLIO	RECEIVED	RELEASED	DELIVERED	BALANCE

authority of the Collector of Customs.

No responsibility will be assumed for loss or error occasioned by taking orders by telephone.

Transfers of merchandise are **NOT COMPLETE** unless made on the books of the Port of Oakland

STORER'S RECORD

QUANTITY RELEASED	DATE	FOLIO	RECEIVED	RELEASED	DELIVERED	BALANCE

These goods may be delivered upon written order without surrender of this receipt.

2592

13014

1305

U.S.M.C. Docket No. 555
EXHIBIT No. 155

Form 97 6M 6-58

NON-NEGOTIABLE

ORIGINAL

RECEIVING MEMORANDUM
OUTER HARBOR TERMINAL

Date.....

Received from.....

For account of.....

For shipment.....

In apparent good order except as noted:

NO. PACKAGES	DESCRIPTION

PORT OF OAKLAND

By.....

70—20-22

[fol. 2594]

EXHIBIT No. 163

Witness Ricketts

Statement of Oakland Harbor Improvement Bonds Issued and Outstanding

Interest rate		5%	4¾%	4½%	2¾%	2½%	1¾%
Total issued	$9522000.00	$30000.00	$2000000.00	$6518000.00	$200000.00	$674000.00	$100000.00
Retired	3441000.00	8000.00	622000.00	2573000.00	8000.00	204000.00	26000.00
Outstanding	$6081000.00	$22000.00	$1378000.00	$3945000.00	$192000.00	$470000.00	$74000.00

Note: Premiums aggregating $213771.00 have been received from purchasers of these issues.

1307

[fol. 2595] EXHIBIT No. 164

Witness Ricketts

Analysis of Amount Received from PWA

PWA Docket No.	Construction Work	Amount Rec'd from PWA
7956	391' Extension to Outer Harbor Terminal Wharf	$51304.69
1395	504' Extension to Outer Harbor Terminal Open Wharf	* 120542.78
1396 A	Extension to Apron Wharf 9th Avenue	* 45715.92
1396 B & C	270' Extension to Outer Harbor Terminal Transit Shed #2	* 23512.67
1629	9th Avenue Pier Extension	69919.82
		$310995.88

* In remitting to the Port of Oakland on these projects, checks were received covering two separate projects sometimes, with no indication as to how much applied to each one individually, hence we have no way of determining exactly how much applied to any one of Dockets 1395, 1396 A and 1396 B & C. A total amount of $189,771.37 was received from PWA in the aggregate applying against these numbers, which amount was split up by us on the basis of proportionate costs of each unit, with results as above.

[fol. 2596] EXHIBIT No. 165

Witness Ricketts

Statement Showing Tonnage in Storage at the Oakland Municipal Terminals on the Last Day of the Month as Enumerated Below for the Fiscal Year 1939-40

(In tons of 2,000 pounds)

Outer Harbor Terminal

	14th St.	7th St.	Sub Total	Grove & Market St.	Grand Total
July 1939	20,133	3,400	23,533	1,390	24,923
August 1939	19,516	1,058	20,574	1,571	22,145
September 1939	20,634	635	21,269	1,153	22,422
October 1939	19,185	1,233	20,418	1,284	21,702
November 1939	20,822	2,101	22,923	2,755	25,678
December 1939	17,187	3,213	20,400	4,535	24,935
January 1940	14,844	1,689	16,533	3,091	19,624
February 1940	12,517	1,309	13,826	2,953	16,779
March 1940	8,680	1,560	10,240	2,625	12,865
April 1940	5,602	2,347	7,949	1,584	9,533
May 1940	4,687	3,226	7,913	1,285	9,198
June 1940	4,180	2,260	6,440	3,177	9,617
Total	167,987	24,031	192,018	27,403	219,421
Average per mo.	13,999	2,003	16,001	2,284	18,285

[fol. 2597] EXHIBIT No. 172

Howard Terminal

Balance Sheet—December 31, 1939

Assets:

Current Assets:		
Cash on deposit and on hand	$2,325.57	
Accounts Receivable	22,409.95	
Material & Supplies	2,553.61	
Total Current Assets		$27,289.13
Notes Receivable:		7,725.00
Investments		50,000.00

Fixed Assets:			
Land		183,540.09	
Buildings	784,121.89		
Less: Depreciation Reserve	327,250.14		
		456,871.75	
Equipment	194,901.80		
Less: Depreciation Reserve	120,765.06	74,136.74	
Net Fixed Assets			714,548.58
Deferred:			
Taxes Prepaid		454.22	
Insurance Prepaid		5,965.08	
Construction		114,189.51	
Miscellaneous		3,532.83	
Total Deferred Charges			124,141.64
			$923,704.35
Liabilities, Capital & Surplus			
Current Liabilities:			
Accounts Payable		$32,970.04	
Notes Payable		17,000.00	
Accrued Taxes		4,153.89	
Total Current Liabilities			$54,123.93
Mortgage Loan			266,500.00
Capital Stock & Surplus:			
Common Stock		250,000.00	
Surplus:			
Balance, December 31, 1939		353,080.42	
Total Capital Stock & Surplus			603,080.42
			$923,704.35

[fol. 2598] Howard Terminal

Statement of Revenues and Expenses for Year—1939

Revenues:		
Service Charges, Carloading, Car unloading and Miscellaneous Wharfinger Services	$242,247.63	
Dockage and Tolls	36,267.90	
Warehousing and Wharf Demurrage	66,899.24	
Rentals and General Services	30,906.08	
Total—Revenues		$376,320.85
Expenses:		
Payrolls	243,258.93	
Depreciation, Insurance & Taxes on Structures	41,913.15	
Depreciation, Insurance & Taxes on Equipment	7,687.18	
Maintenance, Structures & Equipment	10,258.75	
Workmen's Compensation Insurance	6,837.89	
Payroll Taxes	10,309.18	
Power & Light	5,979.83	
Telephone & Telegraph & Postage	9,166.69	
Barging Freight	3,990.49	
Equalization of freight rates	762.49	
Loss & Claims	1,622.67	
Stationery and Printing	4,776.17	
Advertising and Dues	6,549.29	
General Expenses	22,203.68	
Total—Operating Expenses		$375,316.39
Net—Operating Income		$1,004.46
Deductions from Income:—Interest		$8,478.41
Loss for Year		$7,473.95

[fol. 2599] IN THE SUPREME COURT OF THE UNITED STATES,
OCTOBER TERM, 1943

No. 20

STATEMENT OF POINTS UPON WHICH APPELLANTS INTEND TO RELY ON APPEAL—Filed March 5, 1943

Come now appellants in the above-entitled cause, State of California, and Board of State Harbor Commissioners for San Francisco Harbor, and state that their appeal herein is from the final decree made and entered in the above-entitled cause on December 1, 1942, as is more fully stated in the petition for appeal and the order allowing appeal herein, to which reference is hereby made, and that the points on which said appellants intend to rely in this court on their appeal herein in this case are as follows:

I

That the Court erred in making and entering its final decree denying the permanent injunction applied and prayed for by petitioners and appellants, and in dismissing the proceedings in the above-entitled cause, for the following reasons:

(1) That the Court erred in finding and concluding that each of the petitioners and appellants herein is an "other [fol. 2600] person subject to this Act", as defined in the Shipping Act, 1916, as amended;

(2) That the Court erred in not finding and concluding that the Shipping Act, 1916, as amended, does not by its terms purport to apply, and does not apply to either of the petitioners and appellants;

(3) That the Court erred in finding and concluding that said petitioners and appellants are and each of them is subject to the power of Congress to regulate interstate and foreign commerce (Constitution, Art. I, Sec. 8, Cl. 3) in respect to the activities affected by the order of the United States Maritime Commission of September 11, 1941, referred to in the complaint herein;

(4) That the Court erred in finding and concluding that said petitioners and appellants are and each of them is

subject to the jurisdiction of the United States Maritime Commission under the Shipping Act, 1916, as amended, in respect of the activities affected by the order of the Commission of September 11, 1941;

(5) That the Court erred in finding and concluding that the rules, regulations and practices of said petitioners and appellants, and each of them, with respect to free time, are, insofar as they permit free time allowance greater than those set forth in its findings, exclusive of Sundays and holidays, unduly preferential and prejudicial within the meaning of Section 16 of the Shipping Act, 1916, as amended, and unreasonable regulations and practices within the meaning of section 17 of that Act, in that neither section 16 nor section 17 of said Act vests in the United States Maritime Commission any power with respect to the free time allowances of either of said petitioners and appellants;

(6) That the Court erred in finding that the granting of [fol. 2601] wharf storage or wharf demurrage services at non-compensatory rates is unduly preferential within the meaning of section 16 of the Shipping Act, 1916, as amended, and an unreasonable practice within the meaning of section 17 of that Act, in that neither section 16 nor section 17 of said Act vests in the United States Maritime Commission any power with respect to any wharf demurrage or wharf storage charge made by either of said petitioners and appellants;

(7) That the Court erred in not finding that at all times mentioned in said petition and in the proceedings before the said Commissioner, petitioner and appellant, State of California, acting by and through petitioner and appellant, Harbor Board, in the construction, maintenance, and operation of San Francisco Harbor, was engaged and now is engaged in the performance of purely governmental functions and at all of said times was not and now is not engaged in any kind of business whatsoever;

(8) That the Court erred in not finding that neither of said petitioners and appellants at any of the times mentioned or inquired into was or now is carrying on the business of furnishing wharfage, dock, warehouse or other terminal facilities in connection with a common carrier by water;

(9) That the Court erred in finding that the rates of petitioners and appellants for wharf demurrage and wharf storage services, at the time referred to in the proceeding before the United States Maritime Commission in Docket No. 555, were producing revenues which were substantially less than the cost of such services, and were and are not compensatory, in that the evidence establishes that such rates produced revenues greater than the out-of-pocket costs incurred in connection with such service.

(10) That the Court erred in concluding that the said order of said Commission in the proceeding in which it was made and issued was sustained by the findings of said Commission.

[fol. 2602]

II

That for all of the reasons assigned in subdivisions (1) to (10), inclusive, of Point I, the Court erred in refusing to make and enter its decree vacating and annulling and permanently enjoining the order of the United States Maritime Commission issued and made in the proceeding before it in Docket No. 555 on September 11, 1941.

III

That for all of the reasons assigned in subdivisions (1) to (10), inclusive, of Point I, the Court erred in finding that the United States Maritime Commission had lawful authority to issue and make its order in the proceeding before it in Docket No. 555, on September 11, 1941.

Dated: March 2, 1943.

Robert W. Kenny, Attorney General of the State of California. Lucas E. Kilkenny, Deputy Attorney General of the State of California, Attorneys for Appellants.

[fol. 2603] Due service and receipt of a copy of the foregoing Statement of Points upon which Appellants Intend to Rely on Appeal are hereby admitted this 3rd day of March, 1943.

Frank V. Hennessy, United States Attorney; Esther B. Phillips, Assistant United States Attorney; Carl F. Farbach, Special Counsel, United States Maritime Commission, Attorneys for United States of America, and United States Maritime Commission, Defendants and Appellees.

Lillick, Geary, Olson & Charles, Ira S. Lillick, Joseph J. Geary, Attorneys for Encinal Terminals, Intervener and Appellee.

Graham & Morse, Attorneys for Howard Terminal, Intervener and Appellee.

Morrison, Hohfeld, Foerster, Shuman & Clark, F. C. Hutchens, Attorneys for Parr-Richmond Terminal Corporation, Intervener and Appellee.

[fol. 2604] AFFIDAVIT OF SERVICE BY MAIL

UNITED STATES OF AMERICA,
State and Northern District of California,
City and County of San Francisco, ss:

The undersigned being duly sworn says:

I am a citizen of the United States, over the age of twenty-one years, a resident of the City and County of San Francisco, State of California, and not a party to the above entitled action; that Robert W. Kenny, Attorney General of the State of California, attorney for appellants above named, has his office at 600 State Building, San Francisco, California; that Charles Fahy, Solicitor General of the United States, maintains and has his office at Washington, D. C., that between said two places there is a regular daily communication by mail; that on the 3rd day of March, 1943, I served on said Charles Fahy, Solicitor General, a true copy of Statement of Points upon which Appellants Intend to Reply on Appeal, herein, to the original of which this affidavit is attached, by depositing said copy on said date in the United States Post Office at the said City and County of San Francisco, State of California, enclosed in a sealed [fols. 2605-2606] envelope, with postage thereon fully prepaid, addressed to Honorable Charles Fahy, Solicitor General of the United States, Washington, D. C., where said attorney has his office, which said envelope was sent by registered air mail, and a return receipt requested.

W. A. Walker.

Subscribed and sworn to before me this 3 day of March, 1943. Robert H. Rusch, Notary Public in and for the City and County of San Francisco, State of California. (Seal) My commission expires May 25, 1946.

[fol. 2607] IN SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1943

No. 20

DESIGNATION OF, AND STIPULATION DESIGNATING PARTS OF RECORD OF APPEAL WHICH ARE NECESSARY AND MATERIAL FOR THE CONSIDERATION OF POINTS UPON WHICH APPELLANTS INTEND TO RELY ON APPEAL—Filed March 5, 1943

It Is Hereby Stipulated and Agreed by and between appellants, State of California, and Board of State Harbor Commissioners for San Francisco Harbor, and all of the appellees above named, by and through their respective attorneys, the undersigned United States Attorney and Special Counsel for the United States Maritime Commission being thereunto duly authorized by the Solicitor General of the United States, that the following parts of the record on appeal in the above-entitled cause are necessary and material, and said appellants and appellees hereby designate the same as necessary and material for the consideration of the points upon which appellants intend to rely on their appeal, and heretofore stated and designated by them, and that the printed record shall consist of such parts of the record on appeal:

[fol. 2608] *Document*	*Pages of Original Certified Record*
1. Petition and Bill for Injunction and attached exhibits (To avoid duplication, the attached exhibits shall be printed only if they are not included in Exhibit No. 1.)	1
2. Order Consolidating Actions for Trial, Permitting Intervention and Granting Interlocutory Injunction	56
3. Answer of the United States of America and United States Maritime Commission and attached exhibits	61
4. Order Permitting Encinal Terminals, a corporation, to Intervene and be treated as a Defendant	67
5. Answer of Intervener Encinal Terminals	68

6. Order Permitting Howard Terminal, a corporation, to intervene and be treated as a Defendant 77
7. Answer of Intervener Howard Terminal 79
8. Order Permitting Parr-Richmond Terminal Corporation, a corporation, to intervene and be treated as a Defendant 72
9. Answer of Intervener Parr-Richmond Terminal Corporation 74
10. Opinion of Statutory Three-Judge Court (The opinion may be omitted in printing, if unnecessary under the rule and practice of the Court, on account of separate printing pursuant to Rule 12, par. 5.) 87
11. Findings of Fact and Conclusions of Law 118
12. Exceptions and Objections and Proposed Amendments to Defendants' Proposed Findings of Fact and Conclusions of Law 104
13. Final Decree of Statutory Three-Judge Court 125
14. Petition for Appeal, Assignment of Errors, and Prayer for Reversal 127
15. Order Allowing Appeal and Fixing Amount of Cost Bond on Appeal 132
16. Citation with Proof of Service 134
17. Statement as to Jurisdiction on Appeal 137
(This statement shall be omitted in printing if unnecessary under the rule and practice of the Court, on account of separate printing pursuant to Rule 12, par. 5.)
[fol. 2609] 18. Notices of Service of Documents on Appellees and Proof of Service on all Appellees other than Solicitor General 166
19. Notice of Service of Documents on Solicitor General Charles Fahy 169
20. Notice of Appeal to Defendants and Interveners with Proof of Service 172
21. Acknowledgment of Attorney General of State of California of Notice of Appeal 178
22. Bond upon Appeal 175
23. Minutes of the Court of February 26, 1942 82
24. Minutes of the Court of May 21, 1942 86

Document	Pages of Original Certified Record
25. This stipulation and order as to Record on Appeal	180
26. Clerk's Certificate	186
(Items 16, Citation with Proof of Service; 22, Bond on Appeal; and 26, Clerk's Certificate, may be omitted in printing, if in accordance with usual practice.)	

The following parts of Petitioners' Exhibit No. 1 (Which said exhibit consists of certified copies of orders and petitions of the United States Maritime Commission in Docket No. 555, introduced in evidence at and forming part of the Original Record of Proceedings had at the trial in the District Court, transmitted on this appeal):

Document

(a) Order, dated November 7, 1939, instituting the proceeding in Docket No. 555.

(b) Supplemental Order, dated November 30, 1939, making Board of State Harbor Commissioners, Port of San Francisco, a respondent.

(c) Supplemental Order, dated February 3, 1940, Making State of California and others respondents.

(d) Report and Order of United States Maritime Commission, dated September 11, 1941.

(e) Petition of Respondents State of California and Board of State Harbor Commissioners for San Francisco Harbor for Reconsideration.

[fol. 2610] (f) Petition of Board of Port Commissioners of the City of Oakland for Reconsideration.

(g) Order of United States Maritime Commission dated October 23, 1941, denying petitions and requests for reconsideration and rehearing.

The following parts of Petitioners' Exhibit No. 2 (which said Exhibit consists of testimony, reported in 11 volumes, taken in proceedings in Docket No. 555, before the United States Maritime Commission and forming part of the Original Proceedings had at the trial in the District Court,

transmitted on this appeal), such parts of such testimony being designated by pages and lines, all inclusive, of the testimony as follows:

Page 1 to page 93, line 18;
Page 143, line 20 to page 144, line 8;
Page 147, line 18, only;
Page 157, line 19 to page 161, line 1;
Page 162, line 15 to page 166, line 8;
Page 204, line 17 to page 205, line 3;
Page 220, line 3 to page 220, line 5;
Page 221, line 14 to page 279, line 1;
Page 549, line 14 to page 553, line 12;
Page 564, line 8 to page 593, line 24;
Page 600, line 10 to page 610, line 15;
Page 617, line 14 to page 622, line 21;
Page 627, line 8 to page 657, line 10;
Page 663, line 10, only;
Page 672, line 5 to page 680, line 21;
Page 690, line 5 to page 690, line 7;
Page 701, line 16, only;
Page 713, line 1 to page 715, line 9;
Page 728, line 17 to page 733, line 14;
Page 740, line 1 to page 745, line 15;
[fol. 2611] Page 759, line 8 to page 761, line 25;
Page 801, line 17 to page 803, line 11;
Page 825, line 17 to page 956, line 6;
Page 962, line 3 to page 1188, line 11;
Page 1194, line 2, to page 1207, line 11;
Page 1306, line 9 to page 1312, line 18;
Page 1326, line 9 to page 1328, line 4;
Page 1364, line 14 to page 1369 line 13;
Page 1433, line 1 to page 1518, line 10;
Page 1523, line 1 to page 1545, line 25;
Page 1548, line 14 to page 1548, line 17;
Page 1575, line 19 to page 1632, line 11;
Page 1729, line 19 to page 1904, line 9.

The following parts of Petitioners' Exhibit No. 3 (which said Exhibit consists of certified copies of original exhibits introduced at the hearings in Docket No. 555 before the United States Maritime Commission—and introduced in evidence at and forming part of the Original Record of Proceedings had at the trial in the District Court; trans-

mitted on this appeal), such exhibits being designated by exhibit numbers, given in Docket No. 555, and all page references being inclusive, as follows:

All Exhibits, each in its entirety, numbered:

1	64A	117	131	153
2	65	126	135	154
3	66	126A	135A	155
4	71A	126B	135B	163
5	98	127	135C	164
8	99	128	137	165
62	103	129	140	172
63	115	130		

[fol. 2612] Parts of the following numbered Exhibits as indicated: (All page references inclusive.)

Exhibit No. 60: All of said exhibit down through 1st paragraph on page 38. Page 44 through 1st sentence of 2nd paragraph; Pages 56 to 67; Pages 73 to 87, line 2; Pages 111 (No. 19) to 119, line 10; Tables I-XIV (all incl.) and maps at end; Pages 124 to 180.

Exhibit No. 61: Introductory letters; Part 1—chs. I, IV, V, VI, VII, VIII; Part III—chs. I, III, IV, V.

Exhibit No. 67: Front page and pages 1 to 5, 10 to 11, and page 31.

Exhibit No. 68: Front page and pages 4 to 7, 10 and 12.

Also the following:

Statement of Points upon which Appellants intend to Rely on Appeal.

This Designation and Stipulation.

Dated March 3rd, 1943.

Robert W. Kenny, Attorney General of the State of California; Lucas E. Kilkenny, Deputy Attorney General of the State of California, Attorneys for Petitioners and Appellants; Frank J. Hennessy, United States Attorney, Esther B. Phillips, Assistant United States Attorney, Carl F. Farbach,

Special Counsel, United States Maritime Commission, Attorneys for United States of America, and United States Maritime Commission, Defendants and Appellees; Lillick, Geary, Olson & Charles, [fol. 2613] Ira S. Lillick, Joseph J. Geary, Attorneys for Encinal Terminals, Intervener and Appellee; Graham & Morse, Attorneys for Howard Terminal, Intervener and Appellee; Morrison, Hohfeld, Foerster, Shuman & Clark, F. C. Hutchens, Attorneys for Parr-Richmond Terminal Corporation, Intervenor and Appellee.

[fol. 2614] AFFIDAVIT OF SERVICE BY MAIL

UNITED STATES OF AMERICA,
State and Northern District of California
City and County of San Francisco, ss:

The undersigned being duly sworn says:

I am a citizen of the United States, over the age of twenty-one years, a resident of the City and County of San Francisco, State of California, and not a party to the above entitled action; that Robert W. Kenny, Attorney General of the State of California, attorney for appellants above named, has his office at 600 State Building, San Francisco, California; that Charles Fahy, Solicitor General of the United States, maintains and has his office at Washington, D. C., that between said two places there is a regular daily communication by mail; that on the 3rd day of March, 1943, I served on said Charles Fahy, Solicitor General, a true copy of Designation of, and Stipulation Designating Parts of Record on Appeal Which Are Necessary and Material for the Consideration of Points Upon Which Appellants Intend to Rely on Appeal, herein, to the original of which this affidavit is attached, by depositing said copy on said [fols. 2615-2616] date in the United States Post Office at the said City and County of San Francisco, State of California, enclosed in a sealed envelope, with postage thereon fully prepaid, addressed to Honorable Charles Fahy, Solicitor General of the United States, Washington, D. C., where said

attorney has his office, which said envelope was sent by registered air mail, and a return receipt requested.

W. A. Walker.

Subscribed and sworn to before me this 3rd day of March, 1943. Robert A. Rusch, Notary Public in and for the City and County of San Francisco, State of California. My Commission Expires May 25, 1946. (Seal.)

[fols. 2617-2620] [File endorsement omitted.]

[fol. 2621] IN SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1943

No. 22

STATEMENT OF POINTS UPON WHICH APPELLANT INTENDS TO RELY ON APPEAL—Filed March 5, 1943

Comes now Appellant, City of Oakland, a municipal corporation, acting by and through its Board of Port Commissioners, and states that its appeal herein is from the final decree made and entered in the above entitled cause on December 1, 1942, as is more fully stated in the petition for appeal and the order allowing appeal herein, to which refer-
[fol. 2622] ence is hereby made, and that the *that the* points on which said Appellant intends to rely on its appeal herein are as follows:

I

That the Court erred in making and entering its final decree denying the permanent injunction applied and prayed for by Petitioner and Appellant, and in dismissing the proceedings in the above entitled cause, for the following reasons:

(a) The Court erred in finding and concluding that this Petitioner is subject to the power of Congress to regulate interstate and foreign commerce in respect to the activities affected by said order of said Commission;

(b) The Court erred in finding and concluding that this petitioner is an "other person" as defined in the Shipping Act, 1916, as amended;

(c) The Court erred in finding that Petitioner's rules, regulations and practices with respect to free-time were or are unduly preferential and prejudicial within the meaning of Section 16 of the Shipping Act, 1916, or unreasonable regulations and practices within the meaning of Section 17 of said act, in that neither Section 16 nor Section 17 of said Act vests in the United States Maritime Commission any power to regulate the free-time allowances of Petitioner and Appellant;

(d) The Court erred in finding that the evidence before the Commission and the Court is sufficient to establish that Petitioner's rates for wharf storage are unduly preferential or prejudicial within the meaning of Section 16 of the Shipping Act, 1916, as amended, or that they constitute an unreasonable regulation or practice within the meaning of Section 17 of said act in that the evidence establishes that such rates are greater than Appellant's out-of-pocket costs incurred in connection with such service;

(e) The Court erred in finding that there was evidence to [fol. 2623] support the finding of the Commission that the minimum rates for wharf demurrage and wharf storage prescribed by the Commission are not in excess of the cost of the service to this petitioner, if by cost is meant out-of-pocket cost of such service;

(f) The Court erred in finding that the services performed by Petitioner in connection with wharf storage and wharf demurrage are carried on in connection with a common carrier by water;

(g) The Court erred in finding that leases between this Petitioner and its lessees are agreements subject to the provisions of Section 15 of the Shipping Act, 1916, as amended, in that Appellant is not an "other person" within the meaning of the Shipping Act, 1916.

II

That for all of the reasons assigned in subdivisions (a) to (g) inclusive of Point I, the Court erred in refusing to make and enter its decree vacating and annulling and permanently enjoining the order of the United States Maritime Commission issued and made in the proceeding before it in Docket No. 555, on September 11, 1941.

III

That for all of the reasons assigned in subdivisions (a) to (g) inclusive, of Point I, the Court erred in finding that the United States Maritime Commission had lawful authority to issue and make its order in the proceeding before it in Docket No. 555 on September 11, 1941.

Dated: March 3, 1943.

W. Reginald Jones, Port Attorney, Attorney for Appellant, Grove Street Pier, Oakland, California.

Receipt of a copy of the within Statement hereby is ac[fol. 2624] knowledged this 3rd day of March, 1943.

Frank J. Hennessy, United States Attorney; Esther B. Phillips, Assistant United States Attorney; Carl F. Farbach, Special Counsel for United States Maritime Commission, Appellee, Attorneys for United States of America, Appellee. Lillick, Geary, Olson & Charles; Ira S. Lillick, Joseph J. Geary, Attorneys for Encinal Terminals, Appellee. Graham & Morse, Attorneys for Howard Terminal, Appellee. Morrison, Hohfeld, Foerster, Shuman & Clark, F. C. Hutchens, Attorneys for Parr-Richmond Terminal Corporation, Appellee.

[fol. 2625] In Supreme Court of the United States
October Term, 1943

No. 22

Stipulation Designating Parts of Record to Be Printed

It Is Hereby Stipulated and Agreed by and between the Appellants above named and Appellees above named, by and through their respective attorneys, the undersigned United States Attorney and Special Counsel for the United States Maritime Commission, being thereunto duly authorized by the Solicitor General of the United States, that the following parts of the record on appeal are necessary and material, and said Appellants and Appellees hereby designate the same as necessary and material, for the consideration of the points upon which Appellants intend to rely on their appeal and heretofore designated and stated by

them, and that the printed record shall consist of such parts of the record on appeal:

(1) Certain documents and papers filed with the Clerk of the District Court, transmitted on appeal, being:

[fol. 2626] Title of Document	Original Page
(a) Petition and Bill for Injunction and attached exhibit	1
(b) Order Consolidating Actions for Trial, Permitting Intervention, and Granting Interlocutory Injunction	17
(c) Answer of the United States of America and United States Maritime Commission without attached exhibit	22
(d) Order Permitting Encinal Terminals, a corporation, to Intervene and be Treated as a Defendant in the Above Entitled Proceedings	53
(e) Answer of Intervenor Encinal Terminals	55
(f) Order Permitting Howard Terminal, a corporation, to Intervene and be Treated as a Defendant in the Above Entitled Proceedings	58
(g) Answer of Intervenor Howard Terminal	60
(h) Order Permitting Parr-Richmond Terminal Corporation, a corporation, to Intervene and be Treated as a Defendant in the Above Entitled Proceedings	63
(i) Answer of Intervenor Parr-Richmond Terminal Corporation	66
(j) Minute Order, February 26, 1942	69
(k) Minute Order, May 21, 1942	73
(l) Opinion	76
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(u) Clerk's Certificate	149

[fol. 2627] (2) Certain parts of Petitioner's Exhibit No. 1, consisting of certified copies of records of the United States Maritime Commission in Docket No. 555, forming part of the original record of proceedings had at the trial in the District Court, transmitted on appeal, being:

(a) Order dated November 7, 1939, instituting the proceeding in Docket No. 555;

(b) Supplemental Order, dated November 30, 1939, making Board of State Harbor Commissioners, Port of San Francisco, a respondent;

(c) Supplemental Order, dated February 3, 1940, making State of California and others respondents;

(d) Report and order of the United States Maritime Commission, dated September 11, 1941;

(e) Petition of Respondent State of California and Board of State Harbor Commissioners for San Francisco Harbor for reconsideration;

(f) Petition of Board of Port Commissioners of the City of Oakland for reconsideration;

(g) Order dated October 23, 1941 denying petitions and requests for reconsideration and rehearing.

(3) Certain parts of Petitioner's Exhibit No. 2, consisting of eleven (11) volumes of testimony taken in proceedings in Docket No. 555 before the United States Maritime Commission and forming part of the original record of proceedings had at the trial in the District Court, trans-[fol. 2628] mitted on appeal, being designated by pages and lines, all inclusive, of the testimony as follows:

Page 1 to page 93, line 18;
Page 143, line 20, to page 144, line 8;
Page 147, line 18 only;
Page 157, line 19, to page 161, line 1;
Page 162, line 15, to page 166, line 8;
Page 204, line 17, to page 205, line 3;
Page 220, line 3, to page 220, line 5;
Page 221, line 14, to page 279, line 1;
Page 549, line 14, to page 553, line 12;
Page 564, line 8, to page 593, line 24;
Page 600, line 10, to page 610, line 15;
Page 617, line 14, to page 622, line 21;
Page 627, line 8, to page 657, line 10;
Page 663, line 10 only;

Page 672, line 5, to page 680, line 21;
Page 690, line 5, to page 690, line 7;
Page 701, line 16 only;
Page 713, line 1, to page 715, line 9;
Page 728, line 17, to page 733, line 14;
Page 740, line 1 to page 745, line 15;
Page 759, line 8, to page 761, line 25;
Page 801, line 17, to page 803, line 11;
Page 825, line 17, to page 956, line 6;
Page 962, line 3 to page 1188, line 11;
Page 1194, line 2, to page 1207, line 11;
Page 1306, line 9, to page 1312, line 18;
Page 1326, line 9, to page 1328, line 4;
Page 1364, line 14, to page 1369, line 13;
Page 1433, line 1, to page 1518, line 10;
Page 1523, line 1, to page 1545, line 25;
[fol. 2629] Page 1548, line 14, to page 1548, line 17;
Page 1575, line 19, to page 1632, line 11;
Page 1729, line 19, to page 1904, line 9.

(4) Certain parts of Petitioner's Exhibit No. 3, consisting of certified copies of original exhibits introduced at the hearings in Docket No. 555 before the United States Maritime Commission and introduced and forming part of the original record of proceedings had at the trial of the District Court, transmitted on appeal, being designated by the numbers assigned them by the United States Maritime Commission, all page references being inclusive:

All of the exhibits numbered as follows (each in its entirety):

[fol. 2629]

1	62	98	126a	131	153
2	63	99	126b	135	154
3	64A	103	127	135a	155
4	65	115	128	135b	163
5	66	117	129	135c	164
8	71-A	126	130	137	165
				140	172

Parts of the following exhibits as indicated:

Exhibit 60:

All of said exhibit down through first paragraph on page 38; page 44 through first sentence of 2nd paragraph; pages

56 to 67; pages 73 to 87, line 2; pages 111 (No. 19) to 119, line 10; pages 124 to 180; Tables I to XIV (all inclusive) and maps at end.

Exhibit 61:

Introductory letters; Part I—Chs. I, IV, V, VI, VII, VIII; Part III—Chs. I, III, IV, V.

Exhibit 67:

Front page and pages 1 to 5, 10 to 11, 31.

Exhibit 68:

Front page and pages 4 to 7, 10, 12.

(5) Also the following:

[fol. 2630] Statement of Points Upon Which Appellant Intends to Rely on Appeal;
Stipulation Designating Parts of Record to be Printed.

Dated: March 3, 1943.

W. Reginald Jones, Port Attorney, Attorney for Appellant; Frank J. Hennessy, United States Attorney; Esther B. Phillips, Assistant United States Attorney; Carl F. Farbach, Special Counsel for United States Maritime Commission, Appellee, Attorneys for United States of America, Appellee.

Lillick, Geary, Olson & Charles, Ira S. Lillick, Joseph J. Geary, Attorneys for Encinal Terminals, Appellee.

Graham & Morse, Attorneys for Howard Terminal, Appellee.

Morrison, Hohfeld, Foerster, Shuman & Clark, F. C. Hutchens, Attorneys for Parr-Richmond Terminal Corporation, Appellee.

[fol. 2631] AFFIDAVIT OF MAILING

STATE OF CALIFORNIA,
County of Alameda, ss:

DORA E. WILLIAMS, being first duly sworn, deposes and says:

That at all times herein mentioned she was and now is a citizen of the United States, over the age of eighteen (18) years, and not a party to, nor interested in, the above entitled action; that there is a regular course of United States mails between the cities of Oakland, California, and Washington, D. C.; that on the 3rd day of March, 1943, affiant deposited in the United States mails at Oakland, California, an envelope, with registered air mail postage prepaid thereon, and enclosed in said envelope a copy each of Statement of Points Upon Which Appellant Intends to Rely on Appeal and Stipulation Designating Parts of Record to Be Printed, and said envelope was addressed as follows:

[fols. 2632-2633] Charles Fahy, Solicitor General, Washington, D. C.

Dora E. Williams.

Subscribed and sworn to before me this 3rd day of March, 1943. Leona Crockett Powell, Notary Public in and for the County of Alameda, State of California. (Seal.)

[fol. 2634] [File endorsement omitted.]

[fol. 2635] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1943

No. 20

ORDER NOTING PROBABLE JURISDICTION—April 12, 1943

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted.

[fol. 2636] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1943

No. 22

ORDER NOTING PROBABLE JURISDICTION—April 12, 1943

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted.

Endorsed on Cover: File No. 47,261, 47,279. Northern California, D. C. U. S., Term No. 20. Enter Lucas E. Kilkenny. State of California and Board of State Harbor Commissioners for San Francisco Harbor, Appellants, vs. The United States of America, United States Maritime Commission, Encinal Terminals, et al. Term No. 22. City of Oakland, a Municipal Corporation, Acting by and through its Board of Port Commissioners, Appellant, vs. The United States of America, United States Maritime Commission, Encinal Terminals, et al. Filed February 23, 1943, March 2, 1943. Term No. 20, O. T. 1943. 22, O. T. 1943.

FILE COPY

Office - Supreme Court, U. S.
FEB 23 1943.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1942

No. 760

STATE OF CALIFORNIA AND BOARD OF STATE HARBOR COMMISSIONERS FOR SAN FRANCISCO HARBOR,

Appellants,

vs.

THE UNITED STATES OF AMERICA, UNITED STATES MARITIME COMMISSION, ENCINAL TERMINALS, ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF CALIFORNIA

STATEMENT AS TO JURISDICTION.

EARL WARREN,
Attorney General of California,
LUCAS E. KILKENNY,
Deputy Attorney General of California,
Counsel for Appellants.

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IN THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF CALIFORNIA, SOUTHERN DIVISION

No. 22000-R

STATE OF CALIFORNIA AND BOARD OF STATE HARBOR COMMISSIONERS FOR SAN FRANCISCO HARBOR,

Petitioners and Appellants,

vs.

UNITED STATES OF AMERICA AND UNITED STATES MARITIME COMMISSION,

Defendants and Appellees.

ENCINAL TERMINALS, HOWARD TERMINAL, AND PARR-RICHMOND TERMINAL, CORPORATION,

Interveners and Appellees.

STATEMENT AS TO JURISDICTION ON APPEAL.

Pursuant to Rule 12 of the Supreme Court of the United States this statement is filed disclosing the basis upon which it is contended that the Supreme Court of the United States has jurisdiction to review on appeal the final decree herein of the District Court of the United States for the Northern District of California, Southern Division.

I.

Statutory Provisions Sustaining Jurisdiction.

Section 210 of the Judicial Code, as amended (U. S. Code, Title 28, Sec. 47a) provides as follows:

"A final judgment or decree of the district court in the cases specified in section 44 of this title may be

reviewed by the Supreme Court of the United States if appeal to the Supreme Court be taken by an aggrieved party within sixty days after the entry of such final judgment or decree, and such appeals may be taken in like manner as appeals are taken under existing law in equity cases. And in such cases the notice required shall be served upon the defendants in the case and upon the attorney general of the State. The district court may direct the original record instead of a transcript thereof to be transmitted on appeal. The Supreme Court may affirm, reverse, or modify as the case may require the final judgment or decree of the district court in the cases specified in section 44 of this title. Appeal to the Supreme Court, however, shall in no case supersede or stay the judgment or decree of the district court appealed from, unless the Supreme Court or a justice thereof shall so direct, and appellant shall give bond in such form and of such amount as the Supreme Court, or the justice of that court allowing the stay, may require. Appeals to the Supreme Court under this section and section 47 of this title shall have priority in hearing and determination over all other causes except criminal causes in that court. (Mar. 3, 1911, c. 231, § 210, 36 Stat. 1150; Oct. 22, 1913, c. 32, 38 Stat. 220.)

Title 28, Sec. 47, U. S. Code, provides in part as to an appeal from a final decree of a statutory three-judge court:

"* * * An appeal may be taken direct to the Supreme Court of the United States from the order granting or denying, after notice and hearing, an interlocutory injunction, in such case if such appeal be taken within thirty days after the order, in respect to which complaint is made, is granted or refused; and upon the final hearing of any suit brought to suspend or set aside, in whole or in part, any order of said commission the same requirement as to judges and the same procedure as to expedition and appeal shall apply." (Act of Oct. 22, 1913, c. 32, 38 Stat. 220.)

These provisions of law are made applicable to orders of the United States Shipping Board (now United States Maritime Commission), such as the order here involved. Section 31 of the Shipping Act, 1916, as amended (U. S. Code, Title 46, Sec. 830; 39 Stat. 738) provides as follows:

> "The venue and procedure in the courts of the United States in suits brought to enforce, suspend, or set aside, in whole or in part, any order of the board shall, except as otherwise provided, be the same as in similar suits in regard to orders of the Interstate Commerce Commission, but such suits may also be maintained in any district courts having jurisdiction of the parties. (Sept. 7, 1916, c. 451, § 31, 39 Stat. 738.)

II.

The Order, the Validity of Which Is Involved.

The proceedings in the United States District Court, from the final decree in which this appeal is taken, sought to set aside, annul and enjoin the enforcement of an affirmative order of the United States Maritime Commission issued and made on September 11, 1941, in a proceeding before said Commission and designated "IN THE MATTER OF SERVICES, RATES, CHARGES, TOLLS, RENTALS, RULES, REGULATIONS, CLASSIFICATIONS, AGREEMENTS, ACTS, PRACTICES, AND OPERATIONS OF THE SAN FRANCISCO BAY AREA TERMINALS NAMED HEREIN" and numbered 555 on the Docket of said Commission.

In its said order the said Commission; among other things, ordered all of the respondents in said proceeding, among which were the petitioners and appellants herein, to cease and desist on or before October 27, 1941, and thereafter to abstain from allowing greater periods of free time for merchandise to remain upon the wharves of said respondents than those prescribed in said order; to cease and

desist on or before October 27, 1941, and thereafter to abstain from publishing, demanding or collecting wharf demurrage and wharf storage rates less than the minimum rates prescribed in said order; and to file with said Commission and keep open to public inspection schedules showing the rates and charges for the furnishing of wharfage, dock, warehouse or other terminal facilities in connection with a common carrier by water. (The order is set out in full in Exhibit "A", attached to the petition and bill for injunction herein.)

III.

Date of Decree and of Presentation of Application for Appeal.

The final decree sought to be reviewed was entered on December 1, 1942, in the District Court of the United States for the Northern District of California, Southern Division. The petition for appeal herein is presented this 31st day of December, 1942.

IV.

Nature and Significance of the Case and the Jurisdiction of the Proceedings.

Petitioners and appellants herein are the State of California, a sovereign State of the United States, and the Board of State Harbor Commissioners for San Francisco Harbor, a duly constituted agency of said State. Said State is, and during all of the times herein mentioned has been, the owner of all of the facilities of San Francisco Harbor, consisting of some forty-five wharves and piers, Ferry Building, Refrigeration Terminal and other structures, all of which are built partly upon and extend over submerged tidelands of the Bay of San Francisco and partly upon filled and reclaimed lands which have been owned by the

State in its sovereign capacity since its admission into the Union, and said State at all times mentioned in the proceedings before the Maritime Commission was and now is administering all of the facilities of said harbor, including a Belt Line Railway, by and through said Board.

On November 7, 1939, the Commission initiated the proceeding before it in Docket 555 on its own motion, making petitioners and appellants, among many others, respondents therein for the purpose of investigating and determining whether the services, rates, charges, tolls, rentals, rules, regulations, classifications, agreements, acts, practices, and operations of all of respondent terminals were in violation of Sections 15, 16, 17 and 20 of the Shipping Act of 1916, as amended.

Hearings in said proceeding were held in San Francisco on February 13 to 16, 19, 20, and 21 and October 7 to 9, 1940, and the matter having been submitted and briefed and argued before the Commission, said Commission made and filed its order hereinabove referred to.

At the outset of the hearing before the Commission the petitioners and appellants herein moved the Examiner conducting the hearing for a dismissal of the proceeding as to them and each of them, which motion was denied by the Examiner, and said petitioners and appellants then appeared generally in said proceeding. Said motion was renewed at the conclusion of the hearing and was in words and figures as set out in Exhibit "A" to the Answer of the United States of America and the United States Maritime Commission, defendants and appellees herein. Said motion was also denied by the Examiner.

The evidence taken at the hearing before the Commission consisted of testimony of many persons connected with the operations of the various respondent terminals, including certain officers of petitioners and appellants, all called as witnesses for the Commission, and also received in evidence

a great number of documents consisting in part of tariffs of the various respondents, including those of petitioners and appellants, maps and diagrams showing the location of their facilities, and financial statements relating to the revenues and expenses of respondents, including those of petitioners and appellants.

All of the evidence with relation to the operations, practices, rates and charges of petitioners and appellants was received over their objection that the Commission was without jurisdiction to inquire into any of the matters or things being investigated as to petitioners and appellants, or to take any testimony concerning the same, or to determine or make any orders concerning them.

That part of the said order of the Commission made and issued on September 11, 1941, ordering the petitioners and appellants, among others, to desist from charging certain rates for wharf demurrage and wharf storage in excess of the minimum prescribed in said order, was based upon a finding made by the Commission that the existing rates of respondents for such wharf demurrage and wharf storage was in general non-compensatory, though no such specific finding was made with respect to the rates of petitioners and appellants. There was no evidence taken or received at said hearing with respect to the cost of wharf demurrage and wharf storage upon the facilities administered by petitioners and appellants.

At said hearing before the Commission testimony was also taken as to the practices, rates, rules and regulations in regard to wharf demurrage and storage at ports on Puget Sound in the State of Washington and also at the port of Portland in the State of Oregon, but in making its said order of September 11, 1941, said Commission made no order with respect to such rates. There was evidence before the Commission that all of the ports around Puget Sound in

the State of Washington and the Port of Portland in the State of Oregon were in competition in trans-Pacific trade with the Harbor of San Francisco, operated by the State of California by and through the Board of State Harbor Commissioners for San Francisco Harbor, petitioners and appellants herein.

Summarizing, it is the contention of these petitioners and appellants:

1. That the Shipping Act, 1916, as amended, has no application to them or either of them;

2. That Congress has no power to regulate them or either of them in any matters relating to the rates, charges, practices, rules or regulations in connection with their operation or management of San Francisco Harbor;

3. That neither of petitioners and appellants is "a person subject to the provisions of this Act", as defined in the Shipping Act, 1916, as amended;

4. That there was no evidence in said proceeding before the Commission as to whether any of the rates or charges of the State of California, operating the Harbor of San Francisco, were or are compensatory;

5. That the order of the Commission was void and of no effect for the reason that it violates Clause 6, Section 9 of Article I of the United States Constitution in that it gives a preference by regulation of commerce or revenue to the ports of the States of Washington and Oregon over the port and harbor of San Francisco in the State of California.

After the making and issuing of the Commission's order of September 11, 1941, the suit in the instant case was filed in the District Court of the United States for the Northern District of California, Southern Division, to set aside, annul and enjoin the enforcement of the said order in accordance

with Sections 24, 208 and 209 of the Judicial Code (U. S. Code, Title 28, Secs. 41 (28), 45 and 46).

Pursuant to the provisions of the District Court Jurisdiction Act (Oct. 22, 1913, c. 32, Title 28 U. S. Code, Sec. 47, 38 Stat. 220) a specially constituted statutory three-judge court was convened for the purpose of hearing the cause, and at a hearing before said Court on October 29, 1941, said Court granted an interlocutory injunction as prayed for in the petition, and a formal order therefor was made by said Court on November 8, 1941, and interlocutory injunction issued on November 10, 1941.

The final hearing was held before said Court on the 26th day of February, 1942, and thereafter the final decree dissolving the interlocutory injunction, denying a permanent injunction, and dismissing the proceedings was made and entered by said Court on December 1, 1942.

The appeal herein is from this final decree.

V.

The Questions Involved Are Substantial.

Petitioner and appellant, State of California, as hereinabove stated, is the owner of all of the harbor facilities of San Francisco Harbor and at all times mentioned in the investigation before the United States Maritime Commission was administering and is now administering the same by and through an agency of said State, to wit, the Board of State Harbor Commissioners for San Francisco Harbor.

The powers and duties of said Board of State Harbor Commissioners are contained in Division VI, Sections 1690-3231, of the Harbors and Navigation Code of the State of California. In the construction, maintenance and administration of these harbor facilities the State of California is exercising a governmental function.

Denning v. *State*, 123 Cal. 316, 55 Pac. 1000;
Sherman v. *United States*, 282 U. S. 25;
Platt v. *Commissioner*, 35 B. T. A. 472;
Commissioner v. *Ten Eyck*, 76 Fed. (2d) 515 (C.C. A. 2);
California v. *Anglim*, 37 Fed. Supp. 663.

Congress has no power, in the exercise of the power to regulate interstate commerce or otherwise, to regulate these purely governmental functions of the State of California.

Gibbons v. *Ogden*, 9 Wheat. 1;
Cincinnati etc. Packet Co. v. *Catlettsburg*, 105 U. S. 559;
Keokuk North Line Packet Co. v. *Keokuk*, 95 U. S. 80, 88.

The Supreme Court of the United States has never held that Congress, by virtue of the power to regulate commerce or any other power granted by the Constitution of the United States, has power to regulate the activities of a sovereign State of the United States engaged in the maintenance, construction or operation of harbor facilities owned by a State.

It is the contention of petitioners and appellants on this appeal, as shown by the assignment of errors, that the Shipping Act of 1916, as amended (39 Stat. 728; 46 U. S. C. A., Secs. 801-842), does not purport to apply and does not apply to either of these appellants.

Section 1 of said Act provides as follows:

> "• • • The term 'other person subject to this act' means any person not included in the term 'common carrier by water', carrying on the business of forwarding or furnishing wharfage, dock, warehouse, or other terminal facilities in connection with a common carrier by water.
>
> "The term 'person' includes corporations, partnerships, and associations, existing under or authorized by the laws of the United States, or any State, Territory, District, or possession thereof, or of any foreign country, • • •"

This section also contains a number of other definitions.

The Act, as amended, creates the United States Maritime Commission and authorizes it to make certain investigations and determinations and orders hereinafter referred to. Section 15 of the Act requires the filing of true and complete memoranda of certain agreements described therein and gives the Commission certain powers with respect to the disapproval, cancelling or modifying of agreements, and provides a penalty for the violation of any of the provisions of said section.

Section 16 provides, among other things, that it shall be unlawful for any common carrier by water or "other person subject to this Act", either alone or in conjunction with any other person, directly or indirectly—

> "First. To make or give any undue or unreasonable preference or advantage to any particular person, locality, or description of traffic in any respect whatsoever, or to subject any particular person, locality, or description of traffic to any undue or unreasonable prejudice or disadvantage in any respect whatsoever."

Section 17 provides as follows:

> "That no common carrier by water in foreign commerce shall demand, charge, or collect any rate, fare, or charge which is unjustly discriminatory between shippers or ports, or unjustly prejudicial to exporters of the United States as compared with their foreign competitors. Whenever the board finds that any such rate, fare, or charge is demanded, charged, or collected it may alter the same to the extent necessary to correct such unjust discrimination or prejudice and make an order that the carrier shall discontinue demanding, charging, or collecting any such unjustly discriminatory or prejudicial rate, fare, or charge.
>
> "Every such carrier and every other person subject to this act shall establish, observe, and enforce just and

reasonable regulations and practices relating to or connected with the receiving, handling, storing, or delivering of property. Whenever the board finds that any such regulation or practice is unjust or unreasonable it may determine, prescribe, and order enforced a just and reasonable regulation or practice."

Section 18 provides that every common carrier by water in interstate commerce shall "establish, observe, and enforce just and reasonable rates, fares, charges, classifications, and tariffs, and just and reasonable regulations and practices relating thereto and to * * * the facilities for transportation, and all other matters relating to or connected with the receiving, handling, transporting, storing, or delivering of property. * * *" The section further provides that:

"Whenever the board finds that any rate, fare, charge, classification, tariff, regulation, or practice, demanded, charged, collected, or observed by such carrier is unjust or unreasonable, it may determine, prescribe, and order enforced a just and reasonable maximum rate, fare, or charge, or a just and reasonable classification, tariff, regulation, or practice."

There is no mention in this section of "other person subject to this Act".

Section 20 contains provisions relating to certain acts forbidden to common carriers by water and "other persons subject to this act", but has no provisions relating to charges or establishment of rates by such persons. The Act further authorizes the investigation of violations of the Act, the holding of hearings, the making of reports, the issuing of orders, and the penalties for violations of the same.

If the Act does not apply to these appellants, the Commission had no jurisdiction of either of them in the proceeding in Docket 555.

The application of Section 1 to public bodies has been considered by the Commission in United States Maritime Commission No. 481, *Wharfage Charges and Practices at Boston, Massachusetts*, 2 USMC 245, but never by any state court nor by the Supreme Court of the United States nor by any inferior federal court.

Another question raised by the assignment of errors on this appeal is the contention of appellants that neither of them is subject to said Act because neither has at any time been engaged in "the business of forwarding or furnishing wharfage, dock, warehouse or other terminal facilities in connection with a common carrier by water", or in any business whatsoever. The wharfage charges imposed by appellants in the administration of San Francisco Harbor are by law restricted to an amount sufficient to pay the expenses incurred in the administration of the Harbor.

> Secs. 3080 and 3084, Harbors and Navigation Code of the State of California.

And as shown by the record, the Harbor in practice is actually conducted in accordance with the law.

A subordinate point involved in this same question is whether the activities of these appellants are carried on "in connection with a common carrier by water", and if they are not so carried on, the Commission had no jurisdiction of either of appellants in Docket 555. An examination of the record is necessary to determine this question, and the contention of appellants is that they are not carrying on such activities in connection with a common carrier by water. Neither of the last two questions has been passed upon by any court.

There is another closely related question raised on this appeal upon which the jurisdiction of the Commission over appellant depends, namely, whether under Sections 15 to 17, inclusive, and Sections 20 and 21 of the Shipping Act of 1916, as amended, or any other provisions of said act, the Commission has jurisdiction over the regulation of free time or demurrage or storage rates or charges of any person administering or operating wharf facilities, and particularly in the manner in which the wharf facilities of the appellants are administered. It is the contention of appellants that the Commission has no such jurisdiction. The only decision in point, brought to the attention of appellants, is *McNeely & Price Co.* v. *Philadelphia Piers, Inc.*, 196 Atl. 846 (Pa.), in which the court said, by way of dicta, that the Commission apparently has such jurisdiction. On account of the fact that this statement is merely dicta and is not supported by any reasoning whatsoever, the question is still a substantial one and is still open and should be decided by the Supreme Court.

The assignments of error also raise the question whether the order of September 11, 1941, of the Commission is not void and of no effect for the reason that it violates Clause 6, Section 9 of Article I of the United States Constitution. While there have been decisions of the Supreme Court of the United States interpreting this question generally, there has been no decision of said court upon the question whether in regulating free time and rates of wharf demurrage in the ports of one State to such an extent that said rates are placed in a more unfavorable competitive situation than previously existed with respect to ports in other States, the Commission has violated the above mentioned constitutional provisions. Appellants contend that the decisions in the Supreme Court of the United States do not apply to the facts of the case on this appeal for the reason that in making the above mentioned order the Commission took testi-

mony as to the rates in existence at the ports in the other States and that its investigation of such rates was broad enough to enable it to make an order in the same proceeding regulating the rates of such ports in the other States.

Finally there is involved on this appeal the question whether the decision of the District Court should not be reversed for the reason that there was no evidence before the Commission in Docket 555 as to the cost of furnishing wharf storage and demurrage on the facilities of these appellants, and because there was no specific finding by the Commission that such charges were non-compensatory. In analogous cases involving orders of the Interstate Commerce Commission, it has been held that such orders are void if not supported by appropriate findings.

Powell v. *United States*, 300 U. S. 276, 81 L. Ed. 643;
Atchison, Topeka & Santa Fe Ry. Co. v. *United States*, 295 U. S. 193, 79 L. Ed. 1382.

And in like cases orders unsupported by evidence are void.

Chicago Junction Case, 264 U. S. 258, 481, 68 L. Ed. 667;
Morgan v. *United States*, 298 U. S. 468, 481.

For all the reasons hereinabove stated, appellants submit the questions raised on this appeal are substantial.

VI.

Cases Believed to Support the Jurisdiction.

Swayne & Hoyt et al. v. *The United States of America*, 300 U. S. 297, 57 S. Ct. 478, involved the validity of an order of the Secretary of Commerce based upon a report of the United States Shipping Bureau, Department of Commerce, the predecessor of the United States Maritime Commission. In this case an appeal was taken from a final decree of the United States District Court for the District of

Columbia, following the procedure provided in Sections 47 and 47a, Title 28, U. S. Code.

The procedure for the review of orders of the Interstate Commerce Commission is identical with that for the review of orders of the United States Maritime Commission and, according to such procedure, appeals from decisions of statutory three-judge courts reviewing Interstate Commerce Commission orders have often been heard by the Supreme Court of the United States. Cases in point include *United States* v. *Illinois Central Railway*, 263 U. S. 515, and *Baltimore & Ohio Railroad Co.* v. *United States (Chicago Junction case)*, 264 U. S. 258.

These and many other cases are believed to support the jurisdiction of this Court in the case at bar.

VII.

Opinion Below.

The District Court of the United States for the Northern District of California, Southern Division, rendered its decision in this case on December 1, 1942, and a copy of the opinion of the Court is appended to this statement as Exhibit "A".

Dated: December 31, 1942.

Respectfully submitted,

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EXHIBIT "A".

(Filed August 20, 1942.)

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF CALIFORNIA, SOUTHERN DIVISION.

No. 22000-R.

STATE OF CALIFORNIA and BOARD OF STATE HARBOR COMMISSIONERS FOR SAN FRANCISCO HARBOR, *Petitioners*,

vs.

UNITED STATES OF AMERICA and UNITED STATES MARITIME COMMISSION, *Defendants*.

No. 22002-L.

CITY OF OAKLAND, a municipal corporation, acting by and through its Board of Port Commissioners, *Petitioner*,

vs.

UNITED STATES OF AMERICA and UNITED STATES MARITIME COMMISSION, *Defendants*.

Before Healy, Circuit Judge; St. Sure and Roche, District Judges.

HEALY, Circuit Judge:

Following its investigation of certain practices of the petitioners and eighteen other terminals in the San Francisco Bay area, the United States Maritime Commission made an order which the petitioners here seek to enjoin.[1] Petitioners' suits have been consolidated, and a three-judge court assembled pursuant to 28 USCA § 47.

The Maritime Commission's hearing was conducted before a trial examiner who made recommendations later put

[1] The Commission's order is reported in 2 U. S. M. C. 588. Petitioners' suits are brought pursuant to 46 USCA § 830 and 28 USCA § 46.

into effect by the order. The Commission found that there is a lack of uniformity in the rules and practices of the terminals in the Bay area in regard to free-time allowance, and that the manner in which they are applied affords opportunity for unequal treatment of shippers; also, that such rules and practices are unduly prejudicial and preferential in violation of § 16, and unreasonable in violation of § 17 of the Shipping Act, 1916, as amended.[2] It found further that the regulations and practices in respect of demurrage and storage charges are lacking in uniformity, and that, as a whole, the terminals are furnishing wharf storage services at non-compensatory rates, resulting in the unequal treatment of users and nonusers of such services; likewise, that these rules and practices are in violation of §§ 16 and 17 of the Act.

As defined by the Commission, free time is the period allowed for the assembling of cargo upon, or its removal from the wharves. Wharf demurrage is the charge accruing on cargo left in possession of the terminal beyond the free-time period. Demurrage is a penalty charge designed to force the cargo off the wharves and thereby clear them for other traffic. In lieu of demurrage, or upon the expiration of the demurrage period, a storage charge may be assessed at a lower rate. As a remedy for the existing abuses, the Commission prescribed a table of free-time periods, the

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[2] Section 16, 46 USCA § 815, provides in part: "It shall be unlawful for any common carrier by water, or other person subject to this chapter, either alone or in conjunction with any other person, directly or indirectly—

First. To make or give any undue or unreasonable preference or advantage to any particular person, locality, or description of traffic in any respect whatsoever, or to subject any particular person, locality, or description of traffic to any undue or unreasonable prejudice or disadvantage in any respect whatsoever."

Section 17, 46 USCA §816, provides in part: "Every such carrier and every other person subject to this chapter shall establish, observe, and enforce just and reasonable regulations and practices relating to or connected with the receiving, handling, storing, or delivering of property. Whenever the board finds that any such regulation or practice is unjust or unreasonable it may determine, prescribe, and order enforced a just and reasonable regulation or practice."

terminals being ordered to abstain from allowing longer periods than those prescribed.[3] As to demurrage and storage, it prescribed: (a) a penalty charge of 5¢ per ton per day upon cargo remaining beyond the free-time period and not declared for storage, with the further provision that when cargo is not declared for storage by the fifth day it shall automatically go into storage; (b) a storage charge, varying wth different commodities, and based on a fifteen-day period or fraction thereof; and (c) a handling charge, likewise varying with different commodities, to be assessed when cargo goes into storage. The terminals were ordered to abstain from assessing demurrage and storage charges at less than the prescribed rates, but the order was without prejudice to the establishment of higher rates when they were justified and it did not require the reduction of any higher rates then in effect. There was a further requirement that the terminals file with the Commission and keep open to public inspection schedules showing all the rates and charges for the furnishing of wharfage, dock, warehouse, or other terminal facilities in connection with a common carrier by water.

The rates and regulations imposed appear to be identical with those prescribed by the California State Railroad Commission for private terminals in the Bay area.[4] The latter order grew out of the State Commission's investigation, commenced in 1935, of the "chaotic" conditions prevailing in the terminals. The major problems, said the

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[3] The table of prescribed free-time periods, exclusive of Sundays and holidays, is as follows:

	In-bound Days	Out-bound Days
Coastwise and Inland Waterway	5	5
Intercoastal	5	7
Foreign	7	7
Transshipment	10	10

This schedule is without prejudice to a longer period, not in excess of 21 days, on petroleum or products thereof, destined to trans-Pacific ports; and without prejudice to the establishment of reasonable rules and regulations in connection with free-time allowances.

[4] Decision No. 29,171, Case No. 4090, Railroad Commission of the State of California (1936).

State body, were "the inadequacies of the revenues of the terminal operators, the diversion of tonnage through absorptions, and the existence of discriminatory rates between users of the services." A study of terminal operations and revenues was made by agents of the State Commission and the results were set out in a preliminary and a final report, referred to as the Edwards-Differding reports. Based upon their analysis of the cost of rendering the various services, and considering also such factors as competition between terminals and the ability of the traffic to pay, Edwards and Differding recommended the rates and regulations subsequently adopted. Their studies did not extend to the State and municipal terminals, since the State Commission has no jurisdiction over them; and, owing to competitive conditions, the State Commission's order was expressly conditioned upon the voluntary adoption of similar measures by the publicly owned terminals. It appears that all of the terminals, both public and private, have adopted the recommendations of the State Commission as to toll, dockage, and service charges, but not those relating to free time, demurrage, and storage. The Edwards-Differding reports were admitted as evidence in the proceeding before the Maritime Commission, and there was also testimony by Differding. It is conceded that these reports form the basis of the order here under attack.

Both petitioners are public agencies. The members of the Board of State Harbor Commissioners for San Francisco Harbor are appointed by the governor. The function of the Board is to provide the facilities for handling freight and passengers on the San Francisco waterfront. It controls the piers and wharves, all of which are owned by the State, and it operates the Belt-Line terminal railroad. The board assigns pier space to the various steamship lines, giving them a preferential use of the piers, for which it charges a rental.[5] It also collects dockage on vessels and tolls on cargo, as well as demurrage and storage charges. All revenues from handling, loading, and accessorial services are collected and retained by the assignees. The Board

[5] Two of the piers are assigned to private operators, namely, Golden Gate Terminals and State Terminal Company.

is not authorized to make a profit from its operations. It is, however, required to collect sufficient revenue to enable it to perform its duties and pay the principal and interest on its bonds.[6]

Oakland, a municipal corporation, operates several terminals directly, and others it leases to private operators. The facilities are managed and the rates fixed by the Board of Port Commissioners of the Port of Oakland. Deficits in operation are made up by taxation.[6a]

1. Little attention need be given the first argument advanced by the petitioners, namely, that their terminal operations are sovereign or governmental in character, hence are constitutionally immune from Federal control. We do not inquire whether the functions performed are governmental or proprietary, for in either event they are subordinate to the power of Congress to regulate interstate commerce. *United States* v. *California*, 297 U. S. 175.[7] The petitioners contend that since they do not actually handle the cargo which passes through the terminals they are not engaged in "commerce." But their terminal activities bear immediately and substantially upon the flow of goods in interstate and foreign commerce, and it is immaterial that they are not themselves engaged in commerce, as such, or that their activities may be wholly intrastate, *United States* v. *Darby*, 312 U. S. 100, 118; *United States* v. *Wrightwood Dairy Company*, 315 U. S. 110, 121.

2. The provisions of §§ 16 and 17 of the Act apply to a common carrier by water or "other person subject to this chapter." The latter phrase is defined in § 1, 38 USCA § 801, as meaning "any person not included in the term 'common carrier by water,' carrying on the business of forwarding or furnishing wharfage, dock, warehouse, or

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[6] Sections 3080 and 3084, Harbors and Navigation Code of California (1937).

[6a] Success of the terminal operations of Oakland is measured by the industrial development of the city.

[7] See also *Parkersburg & Ohio River Transportation Company* v. *Parkersburg*, 107 U. S. 691, 701; *State of California* v. *Anglim*, 9 Cir., —— F. 2d ——.

other terminal facilities in connection with a common carrier by water." The same section further states that "the term 'person' includes corporations, partnerships, and associations, existing under or authorized by the laws of the United States, or any State, Territory, District, or possession thereof, or of any foreign country."

The major contention advanced appears to be that the Shipping Act of 1916 does not apply to the petitioners in that neither of them is a "person" as that term is defined in the Act. Various reasons are marshaled in support of the contention. It is said that since Congress was at pains to specify the particular entities embraced by the term "person," it must have intended to exclude those not mentioned; that it is a canon of construction that a sovereign is presumptively not bound by its own statute unless specifically named in it; that petitioners are not to be classed as "other persons" subject to the Act for the reason that they are not "carrying on the business of forwarding or furnishing wharfage, dock, warehouse, or other terminal facilities in connection with a common carrier by water," more specifically, that they are not carrying on a business, and that, assuming they are, it is not in connection with a common carrier by water.

It is plain that the statutory enumeration of the entities falling within the term "person" is not exclusive, and was not intended to be so. If it were otherwise, the curious result would follow that even an individual is not a "person" within the intendment of the Act. In Georgia v. Evans, — U. S. —, decided April 27, 1942, the court held that the term "person," as similarly defined in the Sherman Act, includes a state. The court observed that whether the word "person" or "corporation" includes a state "depends upon its legislative environment." Congress knew that a substantial proportion of the wharfinger service of the country is provided by public agencies. The salutary purposes intended to be effected by the Shipping Act would largely be defeated if it were to be held that such agencies are outside the scope of the legislation, as witness the dilemma of the California State Railroad Commission in its attempt to deal with the terminal problem in the Bay area.

Moreover, resort to the legislative history of the Act affords some evidence that it was the intent of Congress to make public terminals subject to regulation.[8] As to the canon of construction relied on, the Supreme Court in United States *v.* California, supra, observed that "the presumption is an aid to consistent construction of the statutes of the enacting sovereign when their purpose is in doubt, but it does not require that the aim of the statute fairly to be inferred be disregarded because not explicitly stated." The State of California is not, incidentally, the enacting sovereign in this instance.

It would hardly be consonant with good sense to believe that the petitioners are not in the "business" of furnishing terminal facilities merely because, as is argued, the governing statute forbids or does not contemplate that they make a profit. The phrase "carrying on business" has not so narrow a connotation as that. Indeed, the State law is in disagreement with the contention insofar as it is made by the Board of State Harbor Commissioners. Section 1731 of the Harbors and Navigation Code of California (1937) provides that the president of the Board "shall supervise the conduct of the dock system, the State Belt Railway and all other departments of the harbor business." And see Denning *v.* State, 123 California 316, 321, in which the California Supreme Court observed that the Board is authorized to conduct the "business of wharfinger." It is equally plain that the business of petitioners is conducted "in connection with a common carrier by water." It is inadmissible to suppose that this phrase limits the definition of "other per-

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[8] During the discussions in the Committee of the Whole House on H. R. 15455, which later became the Shipping Act, reference was made to the fact that large sums of money had been invested in municipal docks by such cities as New York, Seattle, San Francisco, and Los Angeles, and the question was asked whether it was the intention of the bill to take away the control of these municipal wharves from the cities which had constructed them. To this question the chairman of the Committee on the Merchant Marine and Fisheries (the committee in charge of the bill) made the following reply: "Not at all; only to prevent unjust discrimination between shippers. If they do exercise such discrimination, there is no reason why they should not be amenable to the law as well as a private person." 53 Cong. Rec. 8276.

sons" to those whose operations form part of the act of water transportation, for the result would follow that no persons are affected other than common carriers by water. We need not labor the point. The statutory verbiage seems clear enough as it stands. The petitioners are plainly within the definition of those furnishing terminal facilities in connection with common carriers by water.

3. We turn to the contention that the order exceeds the authority conferred upon the Commission by §§ 16 and 17.

The order, insofar as it relates to free time, is clearly valid. The allowance of free time is a "regulation or practice" within the contemplation of § 17, and the petitioners do not attack as unreasonable the maximum free-time periods fixed. The periods prescribed are substantially the same as those already in effect on the San Francisco waterfront; and Oakland's assistant port manager testified that they are reasonable and proper. All parties agree that the question of free time is tied in with the need to keep the transit sheds clear for the purpose of cargo movement. Moreover, lack of uniformity in the practices of particular terminals in regard to extensions of the free-time period results in the giving of undue preferences and advantages, in violation of § 16.[8a]

But the power of the Commission to establish minimum wharfage rates stands on a somewhat different footing. The Commission disavows authority to fix the rates of the petitioners. What it does lay claim to is the authority and the responsibility of preventing discriminatory and unreasonable practices, and it says that it is "not to be deterred by the incidental effect of its action upon rates." In a sense, the whole problem may be said to grow out of the uncontrolled practices regarding free time. There can be no question but that the furnishing of storage at nominal rates, upon the expiration of the free-time period, amounts

[8a] In its findings the Commission states: "Under the stress of competition, most of the larger terminals, in cases of emergencies, extend the free time either to cover the additional number of days of delay to the vessel, or, in the case of Oakland, to such number of days as 'is warranted and equitable in each individual case,' according to the judgment of the Port Manager."

substantially to an extension of the free time.[8b] The difference is merely one of degree. It is difficult to see how the discriminatory and unreasonable practices found to be existent can be corrected unless the terminals are ordered to put a platform beneath the charges imposed where goods are left beyond the free-time period. Cf. Merchants Warehouse Co. *v.* United States, 283 U. S. 501, 513. The rates approved, it should be remembered, were expressly found to be not in excess of cost.

Under § 16, the Commission has power to prevent discrimination between shippers "in any respect whatsoever," and this power has been held to extend to matters of rate discrimination. Compagnie Generale Transatlantique *v.* American Tobacco Co., 2 Cir., 31 F. 2d 663, 666, cert. denied 280 U. S. 555; Booth SS. Co. *v.* United States (D. C. N. Y.), 29 F. Supp. 221. But the present order does not stop with the requirement that all shippers who leave their goods on the wharves beyond free time shall be charged demurrage and storage at uniform rates; it goes further and prescribes the level below which those rates are not to fall. The discrimination said to justify the order is not between shippers who avail themselves of the storage services; it is between the users and nonusers of the service. As the report of the Commission states "the users of the wharf storage services are not providing their proper share of essential terminal revenues," and "a disproportionate share of this burden is being passed to users of other terminal services." The Commission further observed that "the practice of furnishing one service below cost has the tendency to prevent any downward revision of rates for other services, however justified they may be."

Section 16 of the Shipping Act is substantially identical with § 3(1) of the Interstate Commerce Act,[9] 49 U. S. C. A. § 3(1), which has been held applicable to rate discrimination

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[8b] The Commission found that, while the demurrage rates of the San Francisco Board are designed to, and do, accomplish the purpose of clearing the piers for intransit cargo, nevertheless, in order to be competitive, the Board provides a lower "bulkhead" storage rate for cargo not occupying essential transit space.

[9] Cf. United States *v.* Tozer, 29 F. 904, 906.

of the same character as that involved here. In Ex Parte No. 104, Part VI, Warehousing and Storage of Property by Carriers at the Port of New York, 198 I. C. C. 134, 216 I. C. C. 291, and 220 I. C. C. 102, the Interstate Commerce Commission held that the practice of certain railroads in furnishing storage to shippers at non-compensatory rates results in undue prejudice to those shippers whose commercial practices do not permit of their placing their goods in storage, but require direct shipment from shipside to destination. The prejudice was found to extend to "all persons who are compelled to bear the carrier's transportation rates which are dissipated by their storage practices," 216 I. C. C. 291, 351. This administrative decision, involving § 3(1) of the Interstate Commerce Act, was upheld in Baltimore & Ohio Railroad Company *v.* United States, 305 U. S. 507, substantially on the grounds advanced by the Interstate Commerce Commission. While the case involved other sections of the Act as well as § 3(1), the holding appears to be that the former section, standing alone, would support the Commission's order. The important matter to be noted is that the discrimination discussed by the Supreme Court did not result from the failure of the railroads to treat all shippers alike, but from the fact that certain shippers were not in a position to take advantage of the non-compensatory warehousing service.

While we have considered we have not discussed all the arguments made by the petitioners in respect of the point, and we think it unnecessary to do so. For reasons already given we are of opinion that the order of the Commission in respect of minimum wharfage charges has support in § 16 of the Shipping Act, if not in § 17.

4. The Edwards-Differding studies did not extend to the petitioners' operations, but the record supports the inference that the petitioners' costs were not substantially less than the costs of other terminals in the Bay area. The studies did include the Howard, Encinal, and Parr-Richmond terminals in the East Bay area, as well as the two privately operated piers on the San Francisco waterfront, namely, Golden Gate Terminals and State Terminal Company. The rates recommended by the experts and adopted by the Com-

mission were based on the lowest unit costs, both fixed and operating, of the terminals studied; and there is testimony that such costs have increased since the investigation. Under these circumstances, and in view of petitioners' failure to introduce any evidence tending to show that their costs were lower than those prevailing at the other terminals, we think the Commission was justified in concluding that the minimum rates prescribed were not above the petitioners' cost of rendering the service.

Oakland complains that the Commission should have considered only the out-of-pocket expenses incident to the rendition of the service, and should not have included, as it did, the fixed cost of providing floor space. But we believe that the determination of the proper cost basis should be left to the discretion of the Commission. Certainly we can not say that the formula adopted by it is unreasonable. Cf. Swayne & Hoyt Ltd. *v.* United States, 300 U. S. 297, 304; Virginia Ry. Company *v.* United States, 272 U. S. 658, 663.

5. The Board claims that the order is in conflict with § 9, Article I, of the Constitution, which provides that "no preference shall be given by any regulation of commerce or revenue to the ports of one state over those of another." Since the rates in certain of the Pacific Northwest ports are somewhat lower than those prescribed for the Bay area terminals, the order is said to bestow an unlawful preference on those ports. We note again, in passing, that the Maritime Commission's order is substantially identical with the order of the State's own regulatory body. Moreover, the conditions in the other ports are not shown to be the same. It is enough to say that the order does not affect the rates and practices of any terminal outside the Bay area. As said in Pennsylvania *v.* Wheeling & Belmont Bridge, 18 Howard 421, 435, "what is forbidden is, not discrimination between individual ports within the same or different states, but discrimination between states." There is no discrimination of that character here.

Another contention is that the order is invalid for the reason that it gives an undue preference or advantage to the Northwest as a "locality," within the phraseology of § 16 of the Shipping Act. But the statute obviously refers to

discrimination between shippers. The rates and regulations prescribed by the order are uniformly applicable to all localities which seek the use of petitioners' terminal facilities.

We find that the Maritime Commission had lawful authority to make its regulatory order, and that the same is valid. It is therefore ordered that petitioners' motion for a permanent injunction be denied and the proceedings dismissed, upon preparation of findings of fact and conclusions of law. Petitioners will pay costs.

WILLIAM HEALY,
United States Circuit Judge.
A. F. ST. SURE,
United States District Judge.
MICHAEL J. ROCHE,
United States District Judge.

8-17-42.
Filed Dec. 31, 1942.

(5012)

FILE COPY

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1943

No. 20

STATE OF CALIFORNIA AND BOARD OF STATE HARBOR COMMISSIONERS FOR SAN FRANCISCO HARBOR,

Appellants,

vs.

UNITED STATES OF AMERICA AND UNITED STATES MARITIME COMMISSION, ENCINAL TERMINALS, HOWARD TERMINAL, AND PARR-RICHMOND TERMINAL CORPORATION,

Appellees.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF CALIFORNIA, SOUTHERN DIVISION

BRIEF FOR APPELLANTS

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In the Supreme Court

OF THE

UNITED STATES

OCTOBER TERM, 1943

No. 20

STATE OF CALIFORNIA AND BOARD OF STATE HARBOR COMMISSIONERS FOR SAN FRANCISCO HARBOR,

Appellants,

vs.

UNITED STATES OF AMERICA AND UNITED STATES MARITIME COMMISSION, ENCINAL TERMINALS, HOWARD TERMINAL, AND PARR-RICHMOND TERMINAL CORPORATION,

Appellees.

BRIEF FOR APPELLANTS

I

OPINION OF THE COURT BELOW

The opinion of the District Court of the United States for the Northern District of California, Southern Division, was filed on August 20, 1942, and is reported in 46 Fed. Supp. 474.

II

STATEMENT OF THE GROUNDS ON WHICH THE JURISDICTION OF THE SUPREME COURT OF THE UNITED STATES IS INVOKED

The final decree of the United States District Court was entered December 1, 1942 (R. 108). The Petition for Appeal was filed December 31, 1942 (R. 111), and an order allowing appeal and fixing amount of cost bond on appeal was filed the same day (R. 114). Probable Jurisdiction was noted by the United States Supreme Court on April 12 (R. 1327).

Jurisdiction of this Court is invoked under Section 210 of the Judicial Code, as amended (U. S. Code, Title 28, Sections 47, 47a), and Section 31 of the Shipping Act, 1916, as amended (U. S. Code, Title 46, Section 830; 39 Stat. 738).

Section 210 of the Judicial Code, as amended (U. S. Code, Title 28, Sec. 47a) provides as follows:

> "A final judgment or decree of the district court in the cases specified in section 44 of this title may be reviewed by the Supreme Court of the United States if appeal to the Supreme Court be taken by an aggrieved party within sixty days after the entry of such final judgment or decree, and such appeals may be taken in like manner as appeals are taken under existing law in equity cases. And in such cases the notice required shall be served upon the defendants in the case and upon the attorney

general of the State. The district court may direct the original record instead of a transcript thereof to be transmitted on appeal. The Supreme Court may affirm, reverse, or modify as the case may require the final judgment or decree of the district court in the cases specified in section 44 of this title. Appeal to the Supreme Court, however, shall in no case supersede or stay the judgment or decree of the district court appealed from unless the Supreme Court or a justice thereof shall so direct, and appellant shall give bond in such form and of such amount as the Supreme Court, or the justice of that court allowing the stay, may require. Appeals to the Supreme Court under this section and section 47 of this title shall have priority in hearing and determination over all other causes except criminal causes in that court." (Mar. 3, 1911, c. 231, sec. 210, 36 Stat. 1150; Oct. 22, 1913, c. 32, 38 Stat. 220.)

Title 28, Sec. 47, U. S. Code, provides in part as to an appeal from a final decree of a statutory three-judge court:

"* * * An appeal may be taken direct to the Supreme Court of the United States from the order granting or denying, after notice and hearing, an interlocutory injunction, in such case if such appeal be taken within thirty days after the order, in respect to which complaint is made, is granted or refused; and upon the final hearing of any suit brought to suspend or set aside, in whole or in part, any order of said commission the same requirement as to judges

and the same procedure as to expedition and appeal shall apply." (Act of Oct. 22, 1913, c. 32, 38 Stat. 220.)

These provisions of law are made applicable to orders of the United States Shipping Board (now United States Maritime Commission), such as the order involved in this appeal. Section 31 of the Shipping Act, 1916, as amended (U. S. Code, Title 46, Sec. 830; 39 Stat. 738) provides as follows:

"The venue and procedure in the courts of the United States in suits brought to enforce, suspend, or set aside, in whole or in part, any order of the board shall, except as otherwise provided, be the same as in similar suits in regard to orders of the Interstate Commerce Commission, but such suits may also be maintained in any district courts having jurisdiction of the parties." (Sept. 7, 1916, c. 451, Sec. 31, 39 Stat. 738.)

III

STATEMENT OF THE CASE

This is an appeal from a decree of a specially constituted three-judge District Court for the Northern District of California, Southern Division, dismissing appellants' petition and bill for injunction to set aside, annul and enjoin an affirmative order of the United States Maritime Commission issued and made on September 11, 1941 in a proceeding before said Commission designated "IN THE MATTER OF SERVICES, RATES,

CHARGES, TOLLS, RENTALS, RULES, REGULATIONS, CLASSIFICATIONS, AGREEMENTS, ACTS, PRACTICES, AND OPERATIONS OF THE SAN FRANCISCO BAY AREA TERMINALS NAMED HEREIN". (R. 108-109)

A short history of the proceedings before the Maritime Commission which resulted in the filing of the bill or complaint of plaintiff and appellees will serve to clarify the issues. As appears from the allegations of paragraph IV said bill and complaint (R. 2-4) admitted by the answers, the Maritime Commission, on November 7, 1939, on its own motion, made its order initiating the above mentioned proceeding before it. Subsequently, appellants were named as respondents therein.

Hearings were held before the Commission on February 13, to 19, and 20 to 21, 1940, and, after a continuance, on October 7 to 9, 1940, and the matter submitted on briefs filed. At the beginning of the hearing appellants herein appeared specially and moved to dismiss the proceeding as to each of them on the ground that the Commission had no jurisdiction of either of them or of the subject matter of the investigation so far as it affected either of them. At the conclusion of the hearing the motion was again made on the same grounds. A true copy of this motion is attached to the Answer of Appellees United States of America and United States Maritime Commission as "Exhibit A" (R.

69-70). Both motions were denied by the Chief Regulations Examiner.

Briefs were filed; the Examiner made his proposed report and recommended findings. Recommended findings numbers 1, 6, 8 and 9 were duly excepted to by appellants and briefs in support of the exceptions filed; the matter was orally argued before the Commission on July 9, 1941. Subsequently, on September 11, 1941, the Commission made and filed its order (R. 13-45).

On October 17, 1941, appellants herein filed with the Commission their petition for reconsideration of said order (R. 45-50) which petition was denied by the Commission on October 23, 1941 (R. 68).

In its Report and its said order of September 11, 1941 (R. 13-43), the Commission found, among other things, as follows:

1. That Congress had constitutional power to regulate the activities of appellants (under investigation and referred to in the Report).

2. That appellants were within the definition of "other persons" as defined in Section 1 of the Shipping Act of 1916.

3. That appellants have failed in certain instances to give reasonable notice of tariff changes and prescribing a thirty (30) day prior notice in the future.

4. That the free time periods allowed by appellants for the removal of cargo from the facilities under its jurisdiction are unduly prejudicial and

preferential in violation of Section 16 and unreasonable in violation of Section 17 of the Shipping Act, 1916, as amended, and that any such allowance greater that the period set forth in Table 1 attached to said Order, which reduces appellants' free time allowance in two respects, viz., on outbound intercoastal and foreign trades from the existing ten (10) days to seven (7) days, will in the future be unduly prejudicial and preferential and unreasonable.

5. That appellants' rates, rules, regulations and practices relating to wharf demurrage and wharf storage are non-compensatory resulting in unequal treatment of users and non-users of such services. That said rates, rules, regulations and practices are unduly prejudicial and preferential in violation of Section 16 and unreasonable in violation of Section 17 of the Shipping Act, 1916, as amended and that in the future the assessing and collecting of any charge for such wharf demurrage and wharf storage lower than the schedule of charges prescribed in said order would be unduly prejudicial and preferential and unreasonable. That the rates prescribed for such wharf storage by said Order are set forth therein (R. 44-45) and in the appendix thereto (R. 42-43).

The petition in the United States District Court for bill of injunction was filed on October 21, 1941, by the State of California and Board of State Harbor Commissioners for San Francisco Harbor,

appellants herein (R. 1-50). The answer of defendants, United States of America, and United States Maritime Commission, appellees herein, to said petition and bill, was filed December 19, 1941 (R. 66-70). The answers of interveners, Encinal Terminal, Parr-Richmond Terminal Corporation, and Howard Terminal, all appellees herein, were filed on January 26, 1943 (R. 74-75), January 23, 1942 (R. 76-77) and January 28, 1942 (R. 78), respectively, and each of said answers of interveners adopted the answer of defendants above named, with the exception that intervener Parr-Richmond Terminal Corporation admitted and alleged that it is in competition with other terminals located at other ports on the Pacific Coast and does not admit the reasonableness or validity of the order of the United States Maritime Commission under review in the proceeding with respect to any application of said order not therein under review.

Without going into unnecessary details as to the allegations, admissions and denials of these pleadings appellants here state that it appears therein and therefrom that issue was therein and thereby made and joined, and was made and joined at the trial of said cause in the United States District Court on all of the matters contained in its findings of facts and conclusions of law which are assigned as errors upon this appeal and urged and contained in the statement of points upon which appellants

intend to rely on this appeal and which are specified in Division IV of this brief.

A similar petition and bill for injunction was filed in the United States District Court on October 21, 1941, by the City of Oakland, acting by and through its Board of Port Commissioners (R. 51-62). This action, numbered 22002-R in the District Court, was consolidated for trial with the action instituted by appellants, numbered 22000-R in the District Court (R. 63-66).

The two actions came on for trial on February 26, 1942, at which time evidence was offered by the petitioners in both cases, and received, as follows:

Petitioners' Exhibit No. 1, consisting of certified copies of orders and similar papers re Docket No. 555 before the United States Maritime Commission (R. 79-80).

Petitioners' Exhibit No. 2, consisting of a certified copy of 1904 pages of testimony taken in the proceedings in Docket No. 555 before the United States Maritime Commission (R. 80).

Petitioners Exhibit No. 3, consisting of duplicate copies of one hundred seventy-two (172) original exhibits introduced at the hearings in Docket No. 555 before the United States Maritime Commission, which said duplicate copies of exhibits were substituted for the original exhibits by order of the statutory three-judge court (R. 80).

Briefs were filed, and the two causes orally argued on May 21, 1942; the two causes were then sub-

mitted to the Court for consideration and decision (R. 80-81).

The Court filed its Opinion in the two causes on August 20, 1942 (R. 82-92), and made and filed its findings of fact and conclusions of law in the two causes, on November 16, 1942 (R. 103-110).

Separate final decrees were entered in the two causes, the final decree from which this appeal is taken being made, filed and entered on December 1, 1942 (R. 108-109). An appeal has also been taken in *City of Oakland, etc.* v. *United States of America, et al.*, October Term, 1943.

A Joint Transcript of Record has been prepared and printed under the direction of the Clerk for use in both of said appeals.

FACTS

The following facts have been established without contradiction by the evidence introduced at the trial:

Facilities and charges of appellants

The Board of State Harbor Commissioners for San Francisco Harbor is a governmental agency of the State of California. Said Board, hereinafter referred to as "the Board," is a public body. The members thereof are appointed by the Governor of the State of California. The Board was created under the statutes of the State of California in 1863 and controls the activities of the San Francisco waterfront (R. 141).

The accounting system used by the Board is subject to the control of the State Department of Finance. Matters involving legal interpretations of the Harbors and Navigation Code, regulating the Board in its activities, are referred to the Attorney General of the State of California (R. 484).

The functions of the Board are to provide facilities for the handling of freight and passengers on the San Francisco waterfront. The Board controls all of the commercial waterfront of San Francisco (R. 141). The Board is not regulated by the Railroad Commission of the State of California, nor is the tariff of the Board filed with said Commission (R. 141).

All of the piers built on the San Francisco waterfront have been built by the State of California out of the San Francisco Harbor Improvement Fund or out of Harbor Bond Funds. All of these piers are built out over the submerged tidal waters of San Francisco Bay, or on reclaimed land, and all of them are located on State property owned by the State of California. Previous to the filling in of these tidelands, the lands were covered by tidal waters. All of the reclaimed land has been filled in by the State of California. A seawall was built along the whole course of The Embarcadero. The lands beyond this seawall and adjoining the shore were filled in to constitute The Embarcadero. All of this land was owned by the State of California at the time it was filled in. In fact all of these lands, including

the filled in land and the land which was reclaimed, have been owned by the State since the time of its admission into the Union.

The Board assigns pier space to the various steamship lines on the San Francisco waterfront. These assignments give the steamship companies a preferential use of certain pier space subject to cancellation upon thirty days' notice (R. 141). The Board charges rental for the use of the pier space based upon a square foot basis. The Board also collects dockage charges on the vessel, toll charges on the merchandise moving over the piers, and it collects a demurrage charge on cargo remaining on the piers beyond the free time. These charges are established by the Board and are published in its tariff (R. 141-142).

The Board does not engage in the business of a warehouseman. It is forbidden by law to do so (R. 149).

The demurrage charges applied on the transit piers used for transit operations are high enough to be in effect a penalty charge (R. 150-151). The penalty rate for wharf demurrage assessed by the Board on in-transit operations is a charge which makes it uneconomical for the shipper to leave the cargo on the piers. The purpose of this penalty rate is to clear the transit sheds (R. 452). This penalty basis for wharf demurrage, as well as the bulkhead basis for wharf demurrage, applies to all of the assigned piers (R. 452). The demurrage

charges assessed by the Board in connection with the provisions in the tariff regulating free time, effectively move the cargo off the docks and keep the docks clear (R. 468-469).

The Board does not follow the policy of prescribing daily rates for demurrage storage because of the manner of administration and the expense of keeping books every day. The rate over a period of time will work out just about the same on a monthly basis—by a regular shipper—as it will on a daily basis. It has been the position of the Board of State Harbor Commissioners that with the single exception of outbound cargo which remains on assigned space longer than the free time, all other charges for wharf demurrage, whether penalty basis, bulkhead basis or terminal basis, should be on a period basis (R. 457-458). The charges of the Board, as contained in the tariff, are assessed uniformly at all times. The accounts are audited by the State Department of Finance, and in a recent check-up of demurrage charges the Board was told that the charges had been assessed one hundred per cent (R. 484). Demurrage charges of the Board have never been waived (R. 458, 483, 469, 511). The Board, in connection with any wharf demurrage or bulkhead storage, does not issue any kind of a receipt that is used as collateral for bank loans (R. 467).

On docks other than Piers 45 and 56, where the Board sometimes has storage or bulkhead storage,

the Board does not perform any of the labor in connection therewith. Expenses of handling in connection with wharf demurrage on piers other than 45 and 56 are paid by the assignees of those particular piers. The Board does not on any of the piers or docks do any checking of cargo (R. 476), or do any stapling, stenciling or weighing (R. 477, 478), or do any highpiling or moving of cargo (R. 496), or impose any receiving or delivery charges (R. 510).

Types of demurrage and storage charges made by the Board

On the so called "assigned piers," or piers other than 45 and 56, if the cargo remains longer than the free time the Board applies what is termed "the penalty rate of demurrage", which, as shown by "Exhibit 64a", (p. 18) (appears R. 1082, in evidence R. 651), is as follows: for Coastwise and Inland Water Way Trade Outbound, assembled cargo "2½ cents per ton per day, weight or measurement, which ever will yield the greatest revenue for the first 5 days or part thereof, and 5 cents per ton per day for the next 5 days or part thereof, and 10 cents per ton per day for each succeeding day * * * *."

On Foreign Offshore and Intercoastal Trade, outbound, assembled cargo, the wharf demurrage rate is 2½ cents per ton per day for the first 3 days, 5 cents per ton per day for the next 4 days, and 10 cents per ton for each succeeding day.

On all types of cargo, after free time, on inbound discharged cargo, 25 cents per ton, weight or measurement, whichever will yield the greater revenue, for the first 5 days or part thereof, and 50 cents per ton for each succeeding period of 5 days or part thereof, with the exception of certain specified commodities.

Under certain circumstances, which are provided for in its tariff, pages 19, 20, Exhibit 64a (which appears R. 1083-1084, in evidence R. 651), the Board applies what is commonly known as the "bulkhead rates" which is 12½ cents per ton, weight or measurement, whichever will yield the greater revenue, for each 7 days or part thereof (R. 594). On Piers 45 and 56, occupied by the Golden Gate Terminal Company and the State Terminal Company, Ltd., respectively, another storage rate applied called terminal wharf demurrage but not in regular transit operations. (R. 594)

Charges and activities of terminal operators

The Golden Gate Terminal Company and the State Terminal Company, Ltd., at the time of the hearing were terminal operators holding assignments from the Board (R. 142-143, 594-595). The Golden Gate Terminal Company was located on Pier 45 and the State Terminal Company, Ltd., was located on Pier 56. These companies were not restricted by any conditions imposed by the Board in connection with the license to either of them

that would prohibit them from handling any article of commerce that might move over their terminal properties (R. 467). The Board had complete control of these pier facilities and the terminal companies were simply there to handle such cargo as they might be able to obtain and handle for the shipper (R. 143). They performed these services for themselves and not as agent for the Board (R. 143). They paid no rent to the Board for space in the transit sheds and adjoining spaces, and the charges collected by the Board, viz: dockage, tolls and demurrage were the same as those collected on other piers (R. 144). The Board collected all storage and demurrage charges on these piers (R. 144). The terminal companies collected only for the services they performed (R. 144). The Board collected storage charges for grain at Islais Creek Grain Terminal. This terminal paid the Board rental only for the space used by it for offices and space for cleaning and grading operations (R. 145). Unloading, receiving, weighing, piling, redelivering and reloading grain at this terminal was performed and controlled by the grain terminal (R. 144) and the terminal operator had custody of the grain (R. 146).

The Board makes no handling charges for terminal service (R. 467). No handling operations or services of any kind are performed by employees of the Board (R. 476), or in any manner for the Board (R. 477). The Board assesses no service charge, or receiving or delivery charge (R. 510).

No regulatory body over the Board

The Board does not file its tariff with any regulatory body (R. 471-472). It is the contention of the Board it is not subject to regulation by any regulatory body (R. 471).

The Board does not pay taxes of any kind to anybody (R. 584).

Statutory provisions as to Board action

The Board is controlled, in its action, by the terms of sections 3080 and 3084 of the Harbors and Navigation Code of the State of California in fixing rates, dockage, tolls, wharf rates and other charges (R. 489-490). In fixing rates, dockage, wharfage, tolls, rents, and other charges, the Board is controlled in its action by the terms of section 3080 of the Harbors and Navigation Code of the State of California, which provides that it may collect an amount of revenue therefrom that will enable it to perform the duties required by that part of the Code (R. 489-490).

The Board is also limited by the provisions of section 3084 of the Harbors and Navigation Code of the State of California, which provides that a greater amount of money shall not, in the main, be collected pursuant to Part 1, Division VI of said Code than is necessary to enable the Board to perform the duties required, or to exercise the powers authorized by said Part 1, and to provide for in-

terest and redemption requirements for bonds issued for any of the purposes which said part is intended to promote.

No evidence as to demurrage or storage cost on Board's facilities

No studies have been made by the Board to develop the unit cost of furnishing wharf demurrage based on the Edwards Formula, Case No. 4090, Exhibit 61. The accounting records are not kept in such a way that such studies are possible. The Board has not made any studies to develop the unit cost of furnishing wharf demurrage on the basis of the Edwards Formula and has not made any such studies on any other basis (R. 580). The accounting records of the Board are not kept in such a manner that the costs assignable to wharf demurrage and wharf storage could be allocated to the Edwards Formula (R. 589).

T. G. Differding qualified as a special expert for the Maritime Commission and testified in this proceeding. (R. 237-274, 709-739) The testimony of Mr. Differding was largely, if not entirely, in connection with wharf demurrage and/or wharf storage together with the matter of free time. (R. 244) At pages 61 to 65 of Exhibit No. 60, Preliminary Report in California Railroad Commission Case No. 4090 (appears R. 760. In Evidence R. 242), the matter of wharf demurrage and wharf storage is

treated. Mr. Differding summarized this subject as follows:

All of the general cargo terminal operators in the San Francisco Bay area claimed that the existing charges were unsatisfactory and none were able or even desired to recommend them because of their depressed level. However, the fact is that no changes of any consequence have been made in the rates or charges since 1935 to date, because of certain factors, even though the rendering of the service has become more expensive. (R. 244)

Exhibit No. 61 was received in evidence by the Commission. (Appears R. 871. In evidence R. 245.) The basic theory followed in determining wharf demurrage charges was that those who used the facilities or labor furnished by the terminals should pay for that use regardless of whether the cargo arrived by water, land or truck. Upon following that doctrine through, the conclusions and costs set forth in the final report in California Railroad Commission Case No. 4090 (Exhibit No. 61) were arrived at. (R. 246)

Exhibit No. 61, report of the California Railroad Commission in Case No. 4090, was confined entirely to private terminals. No physical check of the public terminals was made, except of the facilities under assignment by the Board of State Harbor Commissioners, viz., the Golden Gate Terminal and the State Terminal Company, Ltd. However, the matter of wharf demurrage and the incidental

charges in connection with it were entirely under the control of the Board of State Harbor Commissioners and the study in Case No. 4090 went no further than the checking of the facilities under assignment by the Board to the above-named terminals (R. 247). In other words, so far as those two facilities were concerned, the check was confined to "the services rendered other than wharf demurrage or storage matters". No study was made in this case into the wharf demurrage situation at the Port of Oakland or the Port of Stockton (R. 247).

Chapter VIII, pages 93 to 110, inclusive, of Exhibit 61, explains and analyzes wharf demurrage practices and costs as of 1935. There is little change in the practices or rates up to the present time. There is no question, however, that all of the major elements of costs enfering into the providing of this service, have very materially increased since 1935, the only exception appearing to be carrying charges on the structures and land (R. 248).

Some of the suggested changes ordered by the California Railroad Commission in Case No. 4090, Exhibit No. 61, were put into effect at the private terminals in the San Francisco Bay area, but not at the public terminals (R. 262).

IV

SPECIFICATION OF ASSIGNED ERRORS INTENDED TO BE URGED BY THESE APPELLANTS ON THIS APPEAL

On this appeal, appellants herein, State of California and Board of State Harbor Commissioners for San Francisco Harbor, intend to urge and rely upon the following errors, heretofore assigned herein (the word "petitioners," as used in the assignment of Errors, refers to appellants above named):

1. The Court erred in making and entering its final decree denying the permanent injunction applied and prayed for by petitioners and appellants above named, and in dismissing the proceedings in said case.

2. The Court erred in refusing to make and enter its decree vacating and annulling and permanently enjoining the order of the United States Maritime Commission issued and made on September 11, 1941.

3. The Court erred in finding and concluding that each of said petitioners and appellants is an "other person subject to this Act" as defined in the Shipping Act, 1916, as amended.

4. The Court erred in finding and concluding that said petitioners and appellants and each of them is subject to the power of Congress to regulate interstate and foreign commerce (Const., Art. 1, Sec. 8, Cl. 3) in respect to the activities affected by the order of the Commission.

5. The Court erred in finding and concluding that said petitioners and appellants and each of them is subject to the jurisdiction of the United States Maritime Commission under the Shipping Act of 1916, as amended, in respect of the activities affected by the order of the said Commission of September 11, 1941.

7. The Court erred in finding and concluding that the said order of the United States Maritime Commission in the proceeding in which it was made and issued was sustained by the findings of the said Commission and by the evidence of record before the said Commission in said proceeding.

8. The Court erred in finding that the rules, regulations and practices of said petitioners and appellants, and each of them, with respect to free time, are, insofar as they permit free time allowance greater than those set forth in its findings, exclusive of Sundays and holidays, unduly preferential and prejudicial within the meaning of Section 16 of the Shipping Act, 1916, as amended, and unreasonable regulations and practices within the meaning of Section 17 of that Act.

10. The Court erred in finding that the rates of said petitioners and appellants for wharf demurrage and wharf storage services, at the time referred to in said proceedings before the Commission, were producing revenues which are substantially less than the cost of the service, and are not compensatory.

11. The Court erred in finding that the granting of wharf storage or wharf demurrage services at non-compensatory rates is unduly preferential and prejudicial within the meaning of Section 16 of the Shipping Act of 1916, as amended, and an unreasonable practice within the meaning of Section 17 of that Act.

12. The Court erred in finding and concluding that said Commission had lawful authority to issue its said order in the proceeding before it in Docket 555 and that said order is valid and lawful in all respects.

13. The Court erred in not finding and concluding that the Shipping Act of 1916, as amended, does not by its terms purport to apply and does not apply to petitioner and appellant State of California or to petitioner and appellant Board of State Harbor Commissioners for San Francisco Harbor.

14. The Court erred in not finding that at all times mentioned in said petition and in the proceedings before the said Commission, petitioner and appellant State of California, acting by and through petitioner and appellant Harbor Board, in the construction, maintenance and administration of San Francisco Harbor, was engaged and now is engaged in the performance of purely governmental functions and at all of said times was not and now is not engaged in any kind of business whatsoever, and there was no evidence to the contrary at the hearing in said proceeding before the Commission.

15. The Court erred in not finding that there was no evidence at said hearing before the Commission that either of the above named petitioners and appellants was at any of the times mentioned or inquired into at said hearing or is now carrying on the business of furnishing wharfage, dock, warehouse or other terminal facilities in connection with a common carrier by water, or otherwise, or that either of said petitioners and appellants was at any of said times or now is carrying on any business whatsoever.

These are the same errors as those specified in Appellants' Statement of Points upon which appellants intend to rely on appeal (R. 1310), although stated in a different order, the omitted assigned errors numbered 6 and 9, not being included in said last named statement.

V

SUMMARY OF ARGUMENT

Point 1. All of the facilities on the San Francisco Waterfront are state owned, and constructed on State owned sovereign lands, either submerged or reclaimed. The Board of State Harbor Commissioners, an agency of the State of California, manages and controls all of the Harbor property, and collects all port charges, including demurrage and storage charges. The Board is limited by the State law in its charges to an amount sufficient to pay

its expenses. The powers of the Board are governmental in character, and the Courts have so held.

United States Supreme Court decisions are to the effect that the regulation of the rates and charges of such a port is a matter of local and not national concern. Any statements in these cases as to the power of Congress to regulate such matters are but dicta. Wharves are in the same category as public streets, and not subject to the control of Congress under the commerce power, or otherwise. Orders such as the order of the United States Maritime Commission of September 11, 1941, are an unwarranted interference with the fiscal affairs of the State, and not authorized by the power of Congress to regulate interstate or foreign commerce.

Point 2. Neither of the appellants is included within the term "person" or within the phrase "other persons subject to this Act" within the meaning of Section 1 of Shipping Act, 1916, as amended. The meaning of the term "include" depends upon intent. The general rule is that a statute does not apply to a sovereign State unless the State is mentioned therein. States are not mentioned in the Act. The history of the legislation resulting in the enactment of the Shipping Act, 1916, as amended, evidences an intent upon the part of Congress that the Act should not apply to a State. The legislative history and provisions of other statutes in pari materia with the Shipping Act, 1916, as amended, indicate the same intent. The language used in

said Act when analyzed and compared with similar provisions of other Congressional Acts is likewise a strong indication of such intent.

The long period during which the United States Maritime Commission and its predecessor officers and boards did not attempt to regulate public bodies under the Act is an indication that they did not believe that it applied to a State or its political subdivisions.

Another reason why the Act does not apply to either of appellants is that neither of them is engaged in the business of furnishing wharves or docks or other facilities in connection with a common carrier by water, or any business whatsoever.

United States v. *California*, 297 U. S. 175, 80 L. Ed. 567, 56 S. Ct. 421, is not authority for the proposition that the Act applies to appellants or either of them.

Point 3. The United Maritime Commission has no jurisdiction over wharf demurrage or storage rates. The provisions of the Shipping Act, 1916, as amended, grants no power to the Commission over such rates. That Act gives very limited power to the Commission over rates, and no power to fix minimum rates for wharf storage or demurrage. The case of *Baltimore and Ohio R. R. Co.* et al., v. *United States* et al., 305 U. S. 507, 83 L. Ed. 318, 59 S. Ct. 284, is so different, in its factual situation, from the instant case and construes an Act so different from the Shipping Act, that it is not au-

thority in support of the theory that the Commission has authority to establish such minimum rates. The attempt of the Commission to do so is not justifiable as a condemnation of a practice in violation of Sections 16 and 17 of the Shipping Act, unless the revenue from such rates is less than out-of-pocket costs. No such showing as to out-of-pocket costs has been made in this case.

Point 4. The finding of the trial court that the appellants' wharf demurrage and storage rates were producing revenue substantially less than the cost of the service and therefore not compensatory is without evidentiary support. No evidence was produced at the hearing as to such cost, or as to whether any loss that might have resulted from such rates was substantial. No substantial loss could result from these rates and no discrimination between shippers could result unless the out-of-pocket expenses of appellants exceeded the revenues from the services. There is no evidence in the record as to such expenses or whether they exceeded such revenues.

Point 5. The United States Maritime Commission has no jurisdiction or power over wharf storage or wharf demurrage, because no such power is given to it by the Shipping Act, 1916, as amended. This is so because such services are not furnished by parties, who own, conduct or administer wharves, "in connection with a common carrier by water". Such services are furnished independently of the

carrier, who has no interest in it whatsoever and these services are not a part of transportation.

Point 6. The part of the Order of September 11, 1941, relating to free time allowances, so far as it relates to these appellants, has no support in the evidence taken at the trail.

VI

ARGUMENT

Point 1. Neither the State of California nor the Board of State Harbor Commissioners for San Francisco Harbor, Appellants Herein, is Subject to the Power of Congress to Regulate Interstate and Foreign Commerce in Respect to the Activities Affected by the Order of the Commission of September 11, 1941.

The order of the U. S. Maritime Commission made on September 11, 1941, among other things: (1) commanded these appellants together with other respondents in the proceeding before it in Docket 555 to cease and desist and abstain from allowing greater periods of free time than the periods set out in Table 1 of its report; (2) ordered said parties thereafter to abstain from publishing, demanding or collecting wharf demurrage or wharf storage rates which shall be less than the minimum rates found reasonable in its finding No. 7 specifying the rates; and, (3) required said parties to file with the Commission and keep open to public inspection schedules showing all the rates and charges for the furnishing of wharfage, dock, warehouse, or

other terminal facilities in connection with a common carrier by water. (R. 44, 45.)

In the words of the opinion of the trial court, (R. 89), "The Commission disavows authority to fix the rates of petitioners. What it does lay claim to is the authority and responsibility of preventing discriminatory and unreasonable practices * * *."

All of this, the Commission claimed and claims it had authority to do under and by virtue of Sections 16 and 17 of the Shipping Act, 1916, as amended, on the basis of findings that the free time, rules, regulations, and practices of the said parties are unduly prejudicial and preferential in violation of Section 16 and unreasonable in violation of Section 17 of said Act, and that the rates, rules, regulation, and practices of said parties relating to wharf demurrage and wharf storage are unduly prejudicial and preferential in violation of Section 16, and unreasonable in violation of Section 17 of the Shipping Act, 1916, as amended.

Presumably, though not stated in the findings, the Commission based its order as to notification, filing, etc., of schedules on Section 21 of the Act.

It is the position of these appellants that Congress had and has no power under the commerce clause of the Constitution of the United States, or otherwise, to authorize the Commission to make such orders. Before entering upon a discussion of the reasons for this conclusion, at the risk of some repetition,

we here set out the factual situation as to the administration of San Francisco Harbor:

Ownership of land and facilities

All of the piers and other facilities constructed on the San Francisco waterfront have been built by the Board, for the State of California, out of San Francisco Harbor Improvement Fund or out of Harbor bonded funds. Bonded indebtedness for the work of the Board is incurred through general obligation bonds of the State of California approved by the voters of the State. (R. 598-599.)

All of these facilities are built out over the submerged tidelands of San Francisco Bay, or on reclaimed land, and all of them are located on State property owned by the State of California. Previous to the filling in of these tidelands, the lands were covered by tidal waters and were and are now all owned by the State of California. In fact, all of these lands, including the filled land and the land which was reclaimed, have been owned by the State of California since the time of its admission into the Union. (R. 598-599.)

Manner in which the property of the State is used

The Board of State Harbor Commissioners, hereafter called "the Board" is an agency of the State of California. (Harbors & Navigation Code hereinafter called "H & N Code", Section 1700) (R. 141.)

The Board constructs and/or maintains all port facilities by assessment of charges against those who use them. The facilities are used in the following manner:

The Board assigns piers and wharves to the various steamship lines on the San Francisco Waterfront. (Sec. 3061, H & N Code.) These assignments give the steamship companies preferential rights for the use of the pier or piers or facilities assigned to them, subject to thirty (30) days cancellation notice. (H & N Code, Sec. 3063.) The Board also charges a dockage against vessels and makes toll charges against merchandise (cargo) moved over the piers (Sec. 3080, H & N Code), and the Board collects demurrage charges on cargo remaining on the transit piers beyond the prescribed free time (Sec. 3087, H & N Code); all of these charges are determined by the Board, published in its tariff, and assessed to all users alike for similar services. (R. 141-142.)

The Board is limited in its charges by the provisions of Section 3084, H & N Code, which provides that a greater amount of money shall not, in the main, be collected than is necessary to enable the Board to perform the duties required. These duties consist of doing construction work, financed principally from proceeds from the sale of bonds, the principal and interest of which are payable out of Harbor income; maintaining facilities and gen-

erally administering the work and affairs of the Harbor. (R. 489-490.)

The Board does not assess handling charges for terminal services. (R. 467.) No handling operations or services of any kind are performed over the wharves by employees of the Board. (R. 476.) The Board furnishes no stevedores, loaders or unloaders. (R. 477.) The Board does no stapling, stenciling or weighing of cargo. (R. 477-478.) Handling services are never performed on the wharves by the Board. (R. 496.) The Board performs no high piling services nor moving of cargo from one part of the pier to another. (R. 496.) The Board assesses no service charge or receiving or delivery charge on cargo moving over the wharves. (R. 510.)

The status of the State in so administering these properties is that of an owner furnishing facilities alongside of which vessels may moor and upon which property may be deposited by carriers, shippers and consignees, and over which property may be moved and persons may pass for the purpose of loading vessels and for the purpose of discharging upon such facilities goods which are to be delivered to consignees.

The rates of docking of ships at these facilities and for using the facilities for the placing of goods thereon, and allowing them to remain thereon for certain periods of time, are fixed by the State acting by and through the Board.

All of these facilities are located and all of these functions are performed by the State within its own borders.

The powers and duties of the Board are governmental in character

The Board has powers relating to building a seawall and dredge (H & N Code, Sec. 3005); providing Harbor police and making quarantine regulations (H & N Code, Secs. 3204 and 3226); extending streets and establishing thoroughfares (H & N Code, Secs. 3130-3138); exercising the power of eminent domain (H & N Code, Secs. 3135-3136); locating and constructing public dry docks (H & N Code, Sec. 1909); locating docks for Federal use (H & N Code, Sec. 3052); operating a state belt railroad (H & N Code, Sec. 3150); providing a location for air ports (H & N Code, Sec. 1944), and making rules and regulations to control the same (H & N Code, Sec. 1945); contracting for and using fire boats (H & N Code, Secs. 3105 and 3201); mapping waterfront changes (H & N Code, Sec. 1782); making rules and regulations for the commerce of the port. (H & N Code, Secs. 1900 and 1907.)

Other indicia of the governmental character of the Board vested in it by the Harbors & Navigation Code and other statutes are the following:

The Board is required to render a biennial report to the Governor of the State (H & N Code, Sec. 1708); it has the power of appointment of officers

and employees of the State (H & N Code, Sec. 1732); it has possession and control over the area of the Port of San Francisco, owned by the State (H & N Code, Sec. 1770); officers and employees of the Board are members of the State Civil Service System (Constitution of California, Art. XXIV; State Civil Service Act, Cal. Stat. 1937, Ch. 753) and of the Employees' Retirement System of the State of California (State Employees' Retirement Act, Cal. Stat. 1931, Ch. 700, as amended); the revenues of the Board must be deposited monthly in the State Treasury and are subject to budgetary laws, and must be used pursuant to legislative appropriation (H & N Code, Sec. 1706); contracts of the Board must be made in a manner prescribed by law (H & N Code, Sec. 1990); failure to comply with certain rules and regulations of the Board or to place obstructions in the bay without its consent are misdemeanors (H & N Code, Secs. 3200 and 3201); bonded indebtedness for the work of the Board is incurred through general obligation bonds of the State of California. (Stat. 1905, Ch. 522; Stat. 1909, Ch. 1713; Stat. 1913, Chap. 1122; Stat. 1929, Ch. 1776.)

The question of the capacity in which a State acts in constructing, maintaining and operating a port was involved in *Commissioner* v. *Ten Eyck*, 76 Fed. (2d) 515 (C. C. A. 2d). While this case involved the question of liability of an officer of the State for the payment of Federal income tax and has

since been overruled on this point, nevertheless the fundamental question upon which the officer resisted the right of the Federal government to collect the tax was that the State, in building, operating and maintaining the Port of Albany in the State of New York, was engaged in the performance of a usual, traditional and essential governmental function. In order to determine this issue the Court reviewed at length the laws and practices prevalent in European countries and in countries of this continent over a period of hundreds of years with respect to the building and operating of harbors and concluded:

"Port and harbor developments have long been regarded as governmental functions in providing for the welfare and prosperity of the people * * * Historically, port activities have been shown to be almost universally directly subject to the supervision of agencies of the government."

"It did operate the railroad, and charged rates authorized by the Interstate Commerce Commission. But we think that this terminal was intended as an *instrument of government rather than of commerce only.* In providing it and operating it, the state of New York was engaged in a usual governmental function as distinguished from a proprietary function." (Emphasis added.)

This case was not appealed by the Government of the United States and the position which the Court

took in regard to the character in which the State acted has not been modified by any Court decision.

The laws governing the creation and government of the Albany Port District were very similar to the statutes of California relating to the conduct and government of the Harbor of San Francisco.

In *Denning* v. *State*, 123 Cal. 316, 55 Pac. 1000, the Supreme Court of California said at pages 321 and 322:

> "The provisions of the constitution clearly show that the State has retained control of the harbor and frontages thereon for the use and benefit of the people, for the promotion of commerce and the general benefit of the body politic, and not as a mere business enterprise through which profits may accrue to the state treasury; and the statute creating the state board of harbor commissioners is intended and adapted to the execution of this purpose * * * But the powers and duties of the board are diversified. It has control of the bay and of the vessels using it; keeping open passageways for the ferry boats; controlling the anchorage of vessels; removing vessels from the wharves and piers when unloaded, and the general care of all the property belonging to the State and connected with the wharves and piers, or used by said board. These duties are of a police character and *purely governmental*.
>
> "The fact that the board is authorized or required to collect tolls and charges for dockage and wharfage to such extent 'as will enable the commissioners to discharge the duties required

of them by the act' *does not affect its character as a governmental agency.*"

The Supreme Court of the United States in *Sherman* v. *United States,* 282 U. S. 25, 75 L. Ed. 143, 51 S. Ct. 41, considered the capacity in which the State of California acts in operating the State Belt Railroad and expressed itself as follows:

> "The matters complained of occurred upon what is known as the State Belt Railroad. The road is about five miles long, within the City of San Francisco, runs nearly parallel with the waterfront of the harbor, and connects many industrial plants and the line of the Southern Pacific Company with wharves belonging to the State and through the wharves with other common carriers engaged in interstate commerce by railroad. It may be assumed that the work done upon the Belt Line was interstate commerce. *But the line belongs to and is operated by the State; the work is done without profit for the purpose of facilitating the commerce of the port, and the funds received after paying expenses go to the Treasury of the State to the credit of the San Francisco Harbor Improvement Fund. California has not gone into business generally as a common carrier but simply has constructed the Belt Line as an incident of its control of the Harbor—a State prerogative.*" (Emphasis added.)

It was specifically held in *Platt* v. *Commissioner,* 35 B. T. A. 472 (1937), that the Board of State Harbor Commissioners of California is engaged in the performance of a usual governmental function.

In *State of California* v. *Anglim*, 37 Fed. Supp. 663, decided in the United States District Court (Northern District of California) on March 6, 1941, the question of the capacity in which the Board is acting was directly involved. The Court expressed itself on the matter as follows:

> "In its operation and maintenance of the Port, the Board performs many functions governmental in nature. It maintains harbor police, fireboats, thoroughfare, public dry docks, aids to navigation; it cares for the removal of obstructions to commerce and navigation. * * * In its scope and effect, port and harbor development, designed to facilitate the flow of commerce, *cannot properly be classified as commerce itself*, normally conducted by *private industry*. The importance to the general welfare, the public at large, of adequate ports and harbors for the stimulation of navigation and commerce; the fact that the development of ports and harbors has not occurred at the hands of private industry, but has remained in the reigns of government as a recognized sovereign right and duty, *these considerations, in the opinion of this court, have rightfully marked the operation of ports and harbors a proper function of government. Denning* v. *State of California*, 123 Cal. 316, 55 P. 1000; *Commissioner of Internal Revenue* v. *Ten Eyck*, 2 Cir. 76 F (2d) 515." (Emphasis added.)

This holding was in no way modified on the appeal of this case. (129 Fed. (2d) 455)

There are a number of cases decided by the United States Supreme Court relating to the powers of States and municipalities, to construct, maintain and administer wharves and other improvements made at State expense used by vessels engaged in interstate commerce. Among these are:

Parkersburg v. *Ohio River Trans. Co.*, 107 U. S. 691, 27 L. Ed. 584, 2 S. Ct. 732;

Ouachita & M River Packet Co. v. *Aiken*, 121 U. S. 444, 30 L. Ed. 976, 7 S. Ct. 907;

Northwestern Union Packet Co. v. *St. Louis*, 100 U. S. 423, 25 L. Ed. 688;

Cincinnati, etc. Packet Co. v. *Catlettsburg*, 105 U. S. 559, 26 L. Ed. 1169;

Packet Co. v. *Keokuk*, 95 U. S. 80, 88, 24 L. Ed. 377;

Sands v. *Manistee River Improvement Co.*, 123 U. S. 288, 31 L. Ed. 149; 8 S. Ct. 113.

All of these cases with the exception of the one last named, dealt with the power of a State or a municipality, authorized thereto by State law, to construct, maintain and administer wharves and other port facilities used by vessels engaged in Interstate Commerce, and to make reasonable charges for such uses. The Supreme Court in these cases has uniformly held that the State has the power to engage in these activities.

In none of these cases was there an issue as to whether the power of the State to engage in such activities was subject to the overriding power of Congress, for it did not appear in any of them that

Congress had undertaken to regulate the charges which were in dispute. It is true that in making these various decisions that the State had the powers above mentioned, the Court did, in some of these cases, by way of dictum only, state that the powers of the States which were under consideration, were being exercised in the absence of Congressional legislation on the subject, but such statements were unnecessary to the decisions made in any of these cases.

On the other hand, there are strong intimations in several of these decisions that the matter of constructing, maintaining and administering wharves used by vessels engaged in Interstate Commerce, is a matter of local concern, and subject to local laws and regulation. Indeed, in *Packet Co.* v. *Keokuk, supra,* where the city of Keokuk had established wharves, under the authority of the State law and its charter, and made charges for the mooring of vessels at such wharves and the use of the wharves, it was held that the charges made by the State were proper charges and the Court in the course of its decision said, with respect to the making of such charges: *"It is in no sense a regulation of Commerce between the States."*

In *Cincinnati, etc. Packet Co.* v. *Catlettsburg, supra,* and in *Parkersburg* v. *Ohio River Transportation Co., supra,* the Court stated that the use of public wharves does not belong to that class of subjects which are in their nature national, requiring a

single uniform rule, but to that class which are in their nature local requiring a diversity of rules and regulations.

We submit that it is a fair resume of the holdings of these cases, to say that in none of them was the issue as to the power of Congress to exercise supervision or control over State or municipal management and use of wharves and charges for such use, presented to the Court for decision. After a thorough research, we have found no case holding that Congress has such power but on the contrary, as we have noted, there are strong expressions in many of the cases to the effect that such matters are of local concern, and within the exclusive powers of the States.

In *Clark* v. *McCarthy,* 1 Cal. 453, 454, it was held that a wharf in its nature is of the same character as a public street.

Section 3138 of the H & N Code provides that the Board of State Harbor Commissioners may use any portion of the streets of San Francisco ending on the waters of the Bay, for loading and landing merchandise with the right to collect dockage, tolls, etc.

Highways, wharves and ferries are considered in law as of the same general nature and are all proper subjects of State regulation.

People v. *San Francisco & Alameda R. R. Co.,* 35 Cal. 606;

Gibbons v. *Ogden,* 9 Wheat. 1, 73, 203, 6 L. Ed. 23.

In *Gibbons* v. *Ogden, supra,* the Court said:

> "That inspection laws may have a remote or considerable influence on commerce will not be denied; but that power to regulate commerce is the source from which the right to pass them is derived, cannot be admitted * * *. These form a portion of that immense mass of legislation which embraces everything within the territory of a state *not surrendered to the general government;* all of which can be most advantageously exercised by the states themselves. Inspection laws, quarantine laws, health laws of every description, as well as the laws regulating the internal commerce of the states, and those which respect *turnpike roads, ferries,* etc., are component parts of this mass.
>
> "No direct general power over these objects is granted to Congress; * * *. (Emphasis added.)

The situation presented in this case is that of a sovereign State of the United States owning certain facilities located entirely within its borders, and in the course of its administration of them making and collecting certain charges for the use thereof, its activities in this regard being of a governmental character and all carried on by a regularly constituted agency, and regularly appointed officers of the State, and in furtherance of statutory provisions having for their purpose the promotion of the flow of commerce through the portion of San Francisco under an avowed policy of paying the expense of the exercise of such functions without a single cent of profit accruing to the State.

The activities of the State, therefore, are not of a commercial character, the purpose of all the activities being to promote the public good.

In these respects the position of the State, so far as it bears upon foreign or interstate commerce is quite different from the position of a private owner and operator of a port conducting the same for gain. It is also different from the position of many municipalities operating ports, in that it has not for its object the building up of industries in a particular locality, but rather has for its purpose the general good of all of the people of the State.

We direct the attention of the Court to that portion of the Order of the Commission of September 11, 1941, which deals with the matter of wharf demurrage and storage rates. Among other provisions of this portion of the Order, is the prescription of:

> "the handling charges appearing in column 4 of the Appendix hereto to be charged when cargo goes into storage". (R. 44-45)

Turning to the Appendix (R. 42-43), we find in column 4 thereof a complete schedule of handling charges for differing commodities, varying from 15 cents to 50 cents per ton. This schedule also provides for daily rates instead of period rates.

The order prescribes not only minimum rates but a method of applying the rates which requires an entire change in the manner in which the Board of State Harbor Commissioners for San Francisco

Harbor has been conducting the business of the harbor. As shown in our Statement of Facts, the Board does not prescribe daily rates for wharf demurrage or storage but assesses all such charges on a period basis (R. 457-458). No handling operations of any kind are ever performed by the Board or its employees (R. 476-477), and the Board never makes any charges for handling services.

This order is a splendid example of an attempt to regulate a State in the performance of an acknowledged governmental function. It is nothing less than an interference with the State's plan for the handling of its fiscal affairs,—a meddling not contemplated by the Federal Constitution.

Article IV, Section 4 of the Constitution of the United States provides:

> "The United States shall guarantee to every State in the Union a Republican form of Government".

What becomes of this guarantee if the Congress may dictate to a State the manner in which its officers shall perform its functions?

Under this guarantee can the Federal government force a State to give to anyone a particular service, or, if not, may it force a State to charge anyone for a service it does not perform?

To state these questions is to answer them. The framers of the Federal Constitution never contemplated such interference with State functions.

In *United States* v. *California*, 297 U. S. 175, 80 L. Ed. 567, the Court was dealing with the use of proper safety appliances in the operation of a railroad by a state. It was concerned with an activity usually carried on by private enterprise. In this respect the case was similar to *South Carolina* v. *United States*, 199 U. S. 437; 50 L. Ed. 261, where the Court considered the power of the national government to tax the liquor business conducted by the State. In that case, while acknowledging that a State may engage in the liquor business, the Court concluded that it was not the intention of the framers of the Constitution that a State, in carrying on such a business, should be immune from the taxing power of the Federal Government. That the Federal Government has no power to tax a State in the exercise of a usual, traditional and essential governmental function is implicit in the decision.

By a similar course of reasoning, the conclusion follows inevitably that a State function which at the time of the adoption of the Federal Constitution, was generally recognized as a usual, traditional and essential governmental function, cannot be hindered or crippled by the exercise of the commerce power of the United States. That the construction, maintenance and administration of ports by States and other governmental agencies, was such a State function at the time the Constitution was adopted, was demonstrated to the satisfaction of the Court in

Commissioner v. *Ten Eyck*, supra, where the Court said:

> "Historically, port activities have been shown to be almost universally directly subject to the supervision of the agencies of government."

Another reason why the case of *United States* v. *California*, supra, should be closely limited in its application to attempts of the Federal Government to cripple a State or a State agency in its proper functioning, is that the Court, in that case, was dealing with a police regulation having for its purpose, the protection of the health and lives of railroad employes and the general public. No such consideration enters into the question of regulation of the building and maintenance of ports or of port charges.

We submit that any attempt on the part of the Federal Government to dictate the manner in which a State shall perform a recognized governmental function, to wit, the administering of a wharf or pier which does not include or comprehend the moving by the State of any property or passengers over the same, or the furnishing of any services in connection with such movement, would be a curtailment of a recognized governmental function of the State and would be an unwarranted extension of Federal power. The effect of such action would be to strike down an activity of the State and impair the functioning of the State in its fullest

efficiency. Such action is not within any power granted to the Federal Government.

Point 2. The Shipping Act of 1916, as Amended, Does Not Purport to Apply and Does Not Apply to Either of These Appellants, State of California or Board of State Harbor Commissioners for San Francisco Harbor in Respect to the Activities Affected by the Order of the United States Maritime Commission of September 11, 1941, or Otherwise

The order of the United States Maritime Commission of September 11, 1941 (R. 44), which the above named appellants seek in this action to have enjoined, set aside, annulled and suspended, purports to have been made pursuant to the provisions of the Shipping Act, 1916 (39 Stat. 728, 46 U. S. Code, Sec. 801), as amended. If the order was not authorized by that Act, it is wholly unauthorized, void and of no effect.

The orders of November 30, 1939 (R. 127-128), and February 3, 1940 (R. 128-129) of the United States Maritime Commission making the Board of State Harbor Commissioners for San Francisco Harbor and the State of California respondents in the proceeding before the Commission, designated as Docket No. 555, alleged that said respondents "carry on the business of forwarding or furnishing wharfage, dock, warehouse, or other terminal facilities in connection with common carriers by water, and therefore are 'other persons subject to this act'

as defined in section 1 of the Shipping Act of 1916, as amended".

The said Act purports by its terms only to regulate the activities of "common carriers by water" and "other persons subject to this act" as defined in Section 1 of the Act.

As appears from the above mentioned orders, and from the evidence received at the hearing in Docket No. 555 and at the trial in the Court below, there was and is no allegation or claim that either of said appellants was or is subject to the provisions of the Act for any reason other than that it is an "other person subject to this act" as defined in Section 1. It is the contention of the said appellants that

A. Neither of said appellants is included within the term "person" or within the phrase "other persons subject to this Act" within the meaning of Section 1 of the Shipping Act, 1916, as amended.

We quote from said Section 1 as follows:

> "The term 'other persons subject to this act' means any person not included in the term 'common carrier by water,' carrying on the business of forwarding or furnishing wharfage, dock, warehouse, or other terminal facilities in connection with a common carrier by water."
>
> "The term 'person' includes corporations, partnerships, and associations, existing under or authorized by the laws of the United States, or any state, territory, district, or possession thereof, or of any foreign country."

As stated in

59 C. J. 948, Sec. 568:

"As the *intention* of the legislature, embodied in a statute, is the law, the fundamental rule of construction, *to which all other rules are subordinate*, is that the court shall, *by all aids available*, ascertain and give effect, unless it is in conflict with Constitutional provisions, or is inconsistent with the organic law of the state, to the *intention or purpose* of the legislature as expressed in the statute." (Emphasis added.)

In *United States* v. *Cooper Corporation*, 312 U. S. 600, 604-605, 85 L. Ed. 1071, 61 S. Ct. 742, the Court said:

"Since, in common usage, the term 'person' does not include the sovereign, statutes employing the phrase are ordinarily construed to exclude it. But there is no hard and fast rule of exclusion. The purpose, the subject matter, the context, the legislative history, and the executive interpretation of the statute are aids to construction which may indicate an *intent* by the use of the term, to bring state or nation within the scope of the law." (Emphasis added.)

In *Georgia* v. *Evans*, 316 U. S. 159, 161, 86 L. Ed. 1346, 82 S. Ct. 972, the Court, in construing Section 7 of the Sherman Act (26 Stat. 209, 210) quotes the above language with approval.

In the absence, therefore, of any direct statement in the law as to whether the term "person" includes the sovereign State of California or its agent, Board

of State Harbor Commissioners for San Francisco Harbor, hereinafter called the "Board," we proceed to examine the statute for the purpose of determining its proper construction in this regard.

As stated in the above quotation from *United States* v. *Cooper Corporation, supra*, statutes employing the phrase "person" are ordinarily construed to exclude a State from the content of that expression.

In the Matter of Will of Fox, 52 N. Y. 530, 535, the Court said:

> "The word 'person', when used in a statute, will, unless the meaning is restricted by the context, be deemed to include corporations. They are artificial persons; bodies politic, possessing some of the attributes of natural persons, and are subject to many of the obligations and duties imposed by law upon individuals. * * * But no authority has been referred to showing that the word person, when used in a statute, may, without further definition, be held to embrace a state or nation."

In the case of

Lowenstein v. *Evans*, 69 Fed. 908,

the Court held that:

> "The act of July 2, 1890 (26 Stat., 209, c. 647), to protect trade and commerce against unlawful restraints and monopolies, is not applicable to the case of a state which, by its laws, assumes an entire monopoly of the traffic in intoxicating liquors. (Act S. C. Jan. 2, 1895)."

the Court further saying:

"* * * nor can it be said that the state is a *person* in the sense of this act."

With respect to the meaning of the word "include", the text of 31 *C. J.* 395 reads as follows:

"*Include.* A word with several common significations. It has at least two shades of meaning. It may apply where that which is affected is the only thing included, and it is also used to express the idea that the thing in question constitutes a part only of the contents of some other thing. *Its meaning is governed by the intention as determined by the context.* According to the context, sometimes the term is used as a word of extension, and not of limitation. The term may be employed as meaning to attain, to comprehend, to comprise as a part, or as something incident, to confine within something, to contain, to embrace, to hold as in an enclosure, to enclose, to involve, to shut up, to take in." (Emphasis added.)

In *People* v. *Fisher*, 261 N. Y. S. 390 (1932), the Court, in reference to the word "include", said:

"The word 'include' has been defined by courts and lexicographers in many ways, and its signification varies according to its peculiar use in a particular statute. * * * In determining which shade of meaning to give the word 'include' the intention of the legislature must be gathered from the context and from the statute as a whole, and such interpretation

should be given as is consonant with reason and sound judgment."

It is a well-known canon of statutory construction that a law is never intended to apply to a sovereign unless the sovereign is mentioned therein, particularly if the law tends to restrain or diminish the powers, rights and interests of the sovereign.

Guaranty Title and Trust Co. v. *Title Guarantee Insurance Co.*, 224 U. S. 152, 56 L. Ed. 706; 325 S. Ct. 457;
United States v. *Herron*, 87 U. S. (Wall.) 251, 22 L. Ed. 275;
In re Fowble, 213 Fed. 676;
Dollar Savings Bank v. *United States*, 86 U. S. (Wall.) 227, 239, 22 L. Ed. 80.

In the case of

United States v. *Clausen*, 291 Fed. 231,

there was involved the construction of the Trading With the Enemy Act (40 Stat. 411, as amended: Secs. 1-50, Vol. 50 U. S. C. A.). Said act provided that the District Court was authorized under the act to enforce all orders and decrees relating to the matters provided for therein. The word "person" was defined in Section 2 of said Act as follows:

"The word 'person' as used herein shall be deemed to mean an individual, partnership, association, company or other unincorporated body of individuals, or corporation or body politic."

The question before the Court was whether a State of the United States was included within the above

quoted definition of person and therefore subject to the jurisdiction of the District Court of the United States. In this connection the Court said:

> "The dignified treatment and consideration due a soverign state form no small part of the reason that has actuated the law-making powers in making a state subject alone to the jurisdiction of the Supreme Court. An implied repeal of the law conferring, so far as the courts of the United States are concerned, exclusive jurisdiction on the Supreme Court of suits against a state is not to be sanctioned, in view of the long established recognition of this principle in the history of the doctrine of states' rights."

There has been some indication by text writers and others that the principle that a sovereign is not brought within the terms of a statute, unless named therein, applied only to the enacting sovereign.

We submit, however that the authorities do not justify any such conclusion.

In

United States v. *Hoar*, 26 Fed. Cas. 329, 330,

Mr. Justice Story had before him the question whether the United States are barred of their suit by the statute of limitations of Massachusetts. This was, therefore, a case where the question was whether a statute of the State of Massachusetts applied to the United States, which was not the enacting sovereign, in the absence of any reference to

the United States. In that case, the Court said, in part:

"* * * 'The true reason, indeed, why the law has determined that there can be no negligence or laches imputed to the crown, and, therefore, no delay should bar its right, (though sometimes asserted to be, because the kind is always busied for the public good, and, therefore, has not leisure to assert his right within the times limited to subjects, 1 Bl. Com. 247,) is to be found in the great public policy of preserving the public rights, revenues and property from injury and loss, by the negligence of public officers. And though this is sometimes called a prerogative right, it is in fact nothing more than a reservation or exception, introduced for the public benefit, and equally applicable *to all governments*. * * * But, independently of any doctrine founded on the notion of prerogative, the same construction of statutes of this sort ought to prevail, founded upon the legislative intention. Where the government is not expressly or by necessary implication included, it ought to be clear from the nature of the mischiefs to be redressed, or the language used, that the government itself was in contemplation of the legislature, before a court of law would be authorized to put such an interpretation upon any statute. In general, acts of the legislature are meant to regulate and direct the acts and rights of citizens; and in most cases, the reasoning applicable to them applies with very different, and often contrary force to the government itself.' "

The above excerpt was quoted with approval by Mr. Justice Fuller in

Stanley v. *Schwalby*, 147 U. S. 508, 37 L. Ed. 259, 13 S. Ct. 418.

And in

New York v. *Irving Trust Co.*, 288 U. S. 329, 331, 77 L. Ed. 815, 53 S. Ct. 389,

the Supreme Court said, with respect to Section 57n of the *Bankruptcy Act*, as amended in 1926 (11 U. S. C. A. Sec. 93n):

> "It is admitted here that as the United States *and the states* are not mentioned in the limitation of section 57, they are not bound thereby." (Emphasis added.)

As stated in *United States* v. *Cooper Corporation*, *supra*, the legislative history of a particular statute is recognized by the Courts as an aid in ascertaining the intent and purpose of Congress in enacting the same. Let us then look at the history of the Shipping Act, 1916, as amended.

Prior to the passage of the Act, an investigation was made pursuant to a resolution of February 24, 1912, authorizing the Committee on Merchant Marine and Fisheries of the House of Representatives to study the subject of foreign commerce, particularly as affected by railroad competition. This report is embodied in *H. R. Document No. 805, 63rd Congress, Second Session*, in the prefatory note of which the following statement was made:

> "* * * But it was later deemed expedient to broaden the scope of this resolution so as to

extend the investigating powers of the Committee to every possible transportation agency (such as forwarding dock, terminal and all other companies and firms) which might be connected in any way with foreign or domestic water carriers, or with railroads, and a knowledge of which might be essential in ascertaining the full relationship between the navigation companies themselves as well as between such companies and the railroads * * *."

This was the genesis of the Shipping Act, 1916, as amended.

The conditions referred to in the report as indicative of a need for such legislation are set out, in part, on pages 239-280 thereof.

On pages 242-246, after listing and characterizing certain agreements between railroads and steamship lines serving Boston, the report says:

"Of the foregoing agreements the first two, between the Boston & Maine and Furness Withy & Co., Ltd., and the Dominion Line are substantially the same in all essential particulars. In both instances the steamship lines agree to operate a regular service of prescribed frequency from certain docks of the railroad company, and in soliciting and engaging cargo to give preference, as far as practicable to freight furnished for shipment by the railroad company * * *. The steamship lines are given the exclusive right to use the docks mentioned in the contract * * *, and their steamers must dock only here, or where permitted by the railroad, and 'nowhere else within the port of Boston'."

With respect to the Boston & Maine's agreement with the Hamburg-American Line, as regards service to and from Hamburg, the report said:

"(1) Section 2, providing that railroad company 'agrees not to furnish the use of its wharves and docks to steamers of other parties plying between Boston and Hamburg, excepting therefrom steamers carrying grain only'."

"(2) Section 2 providing that the steamship line agrees during the continuance of the contract that 'all steamers, if any, managed or controlled by it from time to time, and regularly employed in the trade between the ports of Boston and Hamburg shall dock on said mystic wharf, and not elsewhere within the port of Boston'."

"(3) Section 9, providing that 'In the event of ocean competition to the steamship line between Boston and Hamburg being instituted from wharves of other railroads terminating at Boston, the railroad company shall cooperate with the steamship company in meeting such competition.

"(4) The agreement on the part of the railroad company, as expressed in the communication of March 28, 1912, 'not to make a traffic agreement from Boston nor to grant, accommodations at the Boston & Maine's terminals to any other line of steamers between Boston and Hamburg, full cargo of grain excepted * * *.'"

At pages 246-248 are set out agreements with reference to Philadelphia and Baltimore of a somewhat similar character—one steamship company report-

ing that it has "an arrangement for free wharfage with the Philadelphia & Reading Railway Company as respects its Baltimore Service" and that "these contracts are in substantially the same form "as the agreement with the Boston & Maine Railroad Company described in connection with Boston".

At pages 261-264, the report comments on port conditions at Newport News and Norfolk and calls attention to certain agreements between railroads and steamship lines which provide, among other things, that:

> "* * * The railways agree to furnish the Steamship Company at Newport News and Norfolk *free berth room* for their steamers operated under this agreement *and further* agree to accord to the Steamship Company *free wharfage* both inside and outside on all freight handled by Steamship Company under this agreement at the wharves of the railways when such wharfage would otherwise be borne by the Steamship Company."

Speaking more generally on the relation of railroads to port facilities, the report at page 323 said:

> "But even if independent carriers could manage to overcome all other obstacles, the railroads are still in a position to effectively control independent water carriers by refusing to give them the benefit of their dock facilities at Buffalo both for the discharging and receiving of cargo, the independent carriers thus being required, in addition to the other disadvantages already enumerated, to unload at some other dock

and team the goods to or from the railroad station. To make the situation worse, the railroads have secured nearly all the water frontage in Buffalo available for dock purposes * * *."

And on pages 409-412 in a summary of devices for control of competition included, among other things, the following:

"(9) Railroad or steamship company ownership of exclusive terminal facilities. * * *."

* * * * *

"(17) A railroad or its controlled water line or terminal company holds all the available docks and shed and piers and refuses access to an independent line. * * *"

"(18) A railroad or its controlled water line owns the available water frontage which it refuses to utilize, at the same time refusing to release the same by sale or otherwise. * * *."

"(25) Railroads can give access to docks to preferred water lines with which they have special arrangements, thus forcing shippers by other water lines to pay a series of charges for switching, docking and unloading, and putting them to much inconvenience. In effect it means that the shipper who wishes proper service must use the water line preferred by the railroad."

At page 424 of this report we find the one and only recommendation of the Committee as to terminal facilities:

"(10) That railroads be required to make their terminal facilities available to water carriers on equal terms and under such reasonable conditions as the Interstate Commerce Commis-

sion may prescribe. The Committee also believes that the Federal Government should pursue a policy of not expending money in the interest of any port for harbor or channel improvements, unless that port has sufficient dock facilities available to all water carriers."

It is clear from this report that the existing evils disclosed by the investigation consisted in railroad control of docks, wharves, and other terminal facilities, and the preferential use of the same through agreements between the railroads and steamship lines for the purpose of choking competition, and it is equally apparent that the proposed legislation to remedy these evils was to prevent such preferential use.

There was no indication in the Report that publicly-owned and -administered wharves and docks were being used in the manner shown in the report, or that there was any need of regulation of such facilities in order to strike down existing evils.

After the enactment of the Shipping Act, 1916, as amended, Congress, in enacting other statutes relating to ports, expressed itself in a way which indicates strongly that it had never intended by the Shipping Act, 1916, as amended, to regulate public agencies engaged in furnishing port facilities.

On March 2, 1919, Congress passed an Act entitled: "An Act making appropriations for the construction, repair, and preservation of certain public works on rivers and harbors and for other pur-

poses." (40 Stat. 1275.) At page 1286 of this statute, there is the following provision:

> "It is hereby declared to be the policy of the Congress that water terminals are essential at all cities and towns located upon harbors or navigable waterways and that at least *one* public terminal should exist, constructed, owned, and *regulated* by the municipality, or *other public agency of the State* and open to the use of all on equal terms, and with the view of carrying out this policy to the fullest possible extent the Secretary of War is hereby vested with the discretion to withhold, unless the public interests would seriously suffer by delay, monies appropriated in this Act for new projects adopted herein, or for the further *improvement of existing projects* if, in his opinion, no water terminals exist adequate for the traffic and *open to all on equal terms,* or unless satisfactory assurances are received that local or other interests will provide such adequate terminal or terminals. The Secretary of War, through the Chief of Engineers, shall give full publicity, as far as may be practicable, to this provision." (Emphasis added.)

In this provision Congress clearly indicates its intent and purpose to encourage the construction, ownership and *regulation* by public agencies of States of port facilities. This expression is wholly inconsistent with the idea that Congress had at a previous time undertaken the regulation of such ports and facilities by any Federal agency. The

only possible inference from this legislative declaration is that Congress at the time was under the impression that it had not previously attempted to regulate States or political subdivisions thereof in regard to the furnishing of wharf facilities.

The intent of Congress in enacting the Shipping Act, 1916, as amended, is further evidenced by later legislation in *pari materia* therewith. It is a well-recognized rule in the construction of a statute that the Court may resort not only to contemporaneous and prior acts of the legislature but also to subsequent acts of the legislature in *pari materia*, for the purpose of ascertaining or discovering the intention or meaning of a former statute.

Board of Commissioners v. *Branaman*, 169 Ind. 80, 82 N. E. 65;
United States v. *Freeman*, 44 U. S. (How.) 556, 14 L. Ed. 724.

We quote from the last cited case as follows:

"The correct rule of interpretation is, that if divers statutes relate to the same thing, they ought to be taken into consideration in construing any one of them, and it is an established rule of law that all acts in *pari materia* are to be taken together as if they were one law. If a thing contained in a subsequent statute be within the reason of a former statute, it shall be taken to be within the meaning of that statute: that if it can be gathered from a subsequent statute in *pari materia* what meaning the legislature attached to the words of a former statute, they will amount to a legislative declaration of

its meaning, and will govern the construction of the first statute."

The Transportation Act of 1940 (Public. 785—76th Congress), approved September 18, 1940, amends the Interstate Commerce Act in substantial particulars including the addition thereto of Part III, dealing with the subject of water carriers. Subdivision (a), Section 320 of Part III, repeals the Shipping Act, 1916, as amended, insofar as its provisions are inconsistent with any provision of said Part III, provided that nothing in said Subdivision (a) shall be construed to repeal the provisions of the Shipping Act, 1916, as amended, insofar as such Act provides for the regulation of persons included within the term "other persons subject to this Act" as defined in said Act.

The legislation to add Part III to the Interstate Commerce Act was initiated in *S. 1632*, introduced in Congress in 1935. This bill provided for the regulation of wharfingers as well as water carriers. The wharfingers provisions were later eliminated and the bill was introduced in the next Session as *S. 1400*, which subsequently became Part III of the Transportation Act of 1940.

S. 1632, as originally introduced, defined the term "person" as follows:

> "The term 'person' includes any individual, firm, co-partnership, corporation, company, association, joint stock company or *body politic*." (Emphasis added.)

After the dropping from the proposed legislation of the provisions relating to regulation of wharfingers, the definition of the word "person" in *Section 2* of the *Transportation Act of 1940* read as follows:

> "The term 'person' includes any individual, firm, co-partnership, corporation, company, association, joint stock association, and any trustee, receiver, assignee, or personal representative thereof."

The action of Congress in these successive steps of this legislation is a clear indication that it was not legislating for the purpose of controlling public bodies, otherwise there would be no explanation of the dropping of the expression "body politic" from the definition and such action is a further indication that by the elimination of this phrase it is the intention of Congress that States and their political subdivisions were not to be regulated in this Act.

As a further indication that Congress did not at the time of this legislation regard the word "person" as including a State or agency thereof we refer to Subdivision (1) of Section 13 of Part I of the Transportation Act of 1940, which is the original Interstate Commerce Act, as amended.

This section provides that a petition complaining of acts of any common carrier may be filed with the Interstate Commerce Commission by "any person, firm, corporation, company, or association, or any

mercantile, agricultural, or manufacturing society or other organization, or any *body politic* or *municipal organization,* * * *." (Emphasis added.)

Although other subdivisions of Section 13 were amended at this time, Subdivision (1) was not changed.

Is not the omission to strike the words "body politic" from this section, considered together with the dropping of the same phrase from Section 2 of Part III, a strong indication that Congress did not consider that the word "person" included a "body politic" or a State, or any of its agencies?

On January 21, 1936, the Interstate Commerce Commission transmitted to the President and Congress the Fourth Report of the Coordinator of Transportation, in which the Coordinator said, among other things:

> "The only certain means of correcting these conditions is federal regulation and such regulation is in reality a logical and essential part of federal regulation of water carriage in general. It was for this reason that the provisions for the regulation of 'wharfingers' were included in the original draft of S. 1632 at the last session of Congress. The same purpose can be served, however, by the separate bill now recommended."

Thereafter, the report stated as follows:

> "The separate bill now recommended for the regulation of 'wharfingers' is being prepared after numerous conferences with interested parties. As in the case of the water carrier bill

now before the Senate, the intent is to meet all serious objections which can be met without the sacrifice of principle. The bill will be ready for presentation at an early date."

And afterwards, on March 26, 1936, the Coordinator in a press release said, in part:

"It is also quite generally agreed that legislation for the regulation of wharfingers should be contingent upon legislation for the adequate regulation *of water carriers*, and it still remains for Congress to act upon the latter legislation. In the circumstances, the Coordinator is of the opinion that nothing would be gained by attempting to press the issue of wharfinger regulation at the present session, and will be governed accordingly."

It is a fair inference that at the time of making these statements the Coordinator did not think that there was any statutory provision for the regulation of wharfingers.

We now turn to a consideration of the debate in the House of Representatives during its consideration of the bill which afterwards became the Shipping Act, 1916, as amended. These debates are found in Volume 53 of the Congressional Record, pages 8277 and 8278 thereof, in part, as follows:

Mr. Bennett, a member from New York, offered the following amendment to the above quoted paragraph of the Bill, as follows:

"Page 2, strike out lines 19 to 22, inclusive." (These lines contained the second of the above quoted paragraphs in Section 1 of the Act.)

Thereupon the following remarks were made by members of the House:

"Mr. Bennett. Mr. Chairman, this, of course is covered by decisions and statutes; but there is a distinct danger in attempting to put a definition in the bill where it has already been defined by court decision. I undertake to say that the word 'person' has been defined by the courts in the United States and the several states more than five hundred times. What do you do? If you do not happen to have made as full a definition as some court has, you limit the court. It is useless, simply burdens up the act, and in addition contains a real danger, because, as every lawyer knows, the assertion of one is the exclusion of others; and if for the purposes of this act when used in this act, you have not made the definition as broad as some court has made it, you will simply limit the court.

* * * * * *

"Mr. Hardy. When this question came up, it was asked if there was any statute of the United States defining the word 'person', and, I believe, it was generally conceded that perhaps there were none; and to cover the chance that there might not be such a general definition in the Federal Statutes, we put it in.

"Mr. Bennett. The gentleman does not mean to say that there is no statute definition of the word 'person'?

"Mr. Hardy. I doubt if there is any, including the definition that we give here.

"Mr. Bennett. Corporations and members of partnerships are indicated in every district in the United States on statutory definition.

"Mr. Saunders. That may be as to particular offenses. Is this or not a correct definition?

"Mr. Bennett. So far as I am concerned I am not as competent to decide that question as the gentleman from Virginia.

"Mr. Saunders. Can the gentleman think of anybody who ought to be brought in that this does not bring in? If he does, let him tell us and we will bring him in.

"Mr. Towner. Mr. Chairman, I think this applies only to persons referred to in this bill. I think it is perfectly proper for it to define the word 'person' as used in this bill, because that is for the assistance of the court. Courts very often have difficulty in determining the definition of words. And in doing that we have to ascertain the meaning that was intended by the legislature, so all of these definitions given in this bill are definitions that are intended to be conveyed and those words are used in the bill and it certainly seems to me it is perfectly proper for the committee to have defined them in that way.

"The Chairman. The question is on the amendment offered by the gentleman from New York.

"The question was taken and the amendment was rejected.

* * * * *

"Mr. Bennett. Mr. Chairman, I move to strike out the last word, and I call the attention of the gentleman from Virginia to this. The

gentleman from Virginia asked me if I could suggest any improvement in this definition. I hold in my hand the Revised Statutes, and I desire to say I think I can, because if these framers of the Revised Statutes were right, the gentleman could never convict a natural person. When the framers of the Revised Statutes had the question before them they provided as follows:

"The word 'person' may be extended or applied to partnerships and corporations.

"Of course this is an artificial definition, and in a penal statute a man who is indicted, a natural person, could plead that he was not a person, not being a partnership, corporation or association. I will ask the gentleman from Virginia (Mr. Saunders), in the interest of certainty, whether he does not think it would be a good idea to adopt the wording of the Revised Statutes, which is 'the word person may extend and be applied to'?

"Mr. Saunders. I do not think it at all necessary; but I will say, in deference to the gentleman, that I shall not have any objection to accepting it.

"Mr. Bennett. Mr. Chairman, I ask unanimous consent.

* * * * * *

"Mr. Saunders. I would advise that the gentleman address that to the chairman of the committee. There is no difference in the world. It is only the difference between tweedledum and tweedledee.

"Mr. Bennett. Mr. Chairman, I ask unanimous consent that in line 19 the language may be changed by striking out the word 'includes' on page 2, and inserting in lieu thereof the words 'may extend and be applied to.'

"Mr. Hardy. I object, Mr. Chairman."

It is apparent from the above quoted remarks of members of the House that both the proponents of the bill and those seeking to amend it were of one mind with respect to the purpose of the paragraph relating to the word "person" as used in Section 1 of the Act. They all spoke of the paragraph as being a *definition*, and it is plain that the advocates of the measure intended by the paragraph to extend the meaning of the word "person" so as to include all possible forms of organization which they sought to bring within the regulatory provisions of the Act. This is apparent from the question asked by Mr. Saunders of Mr. Bennett when he said:

"Can the gentlemen think of anybody who ought to be brought in that this does not bring in? If he does, let him tell us and we will bring him in."

The same thought was expressed by Mr. Towner when he said:

"I think this applies only to persons referred to in this bill. I think it is perfectly proper for it to define the word 'person' as used in this bill, because that is for the assistance of the court. Courts very often have difficulty in

determining the *definition* of words. And in doing that we have to ascertain the *meaning* that was intended by the legislature, so all of these definitions given in this bill are *definitions* that are intended to be conveyed and those words are used in the bill * * *." (Emphasis added.)

Furthermore, Mr. Bennett, in speaking of the definition of the word "person" as contained in this paragraph said:

> "If you do not happen to have made *as full* a definition as some court has, you *limit the court*. It is useless, simply burdens up the act, and in addition contains a real danger, because, as every lawyer knows, *the assertion of one is the exclusion* of others; * * *." (Emphasis added.)

Mr. Bennett was undoubtedly referring here to the well-known canon of construction expressed as follows:

> "*Inclusio unius est exclusio alterius.*"

This assertion of Mr. Bennett was not controverted in any way. Indeed, the whole discussion indicates very clearly that all were agreed that the paragraph was intended to define the word "person" and that it was intended to include every form of organization that Congress desired to bring within the regulatory provisions of the Act.

A State most certainly is not a "corporation, partnership, and association, existing under or authorized by the laws of the United States or any

state, territory, district or possession thereof, or of any foreign country" but is a soverign body existing only by reason of the Act of Congress admitting the State into the Union. We submit, therefore, that since the very wording of the definition does not include a sovereign state, and since it appears from the debates on the definition that it was intended to be exclusive as well as inclusive, the legislative history unquestionably shows that the Act was not intended to apply to a sovereign state.

We submit that the definition of the term "person" in Section 1 of the Shipping Act, 1916, as amended, was not intended to include a State for the following additional reasons:

All of the persons enumerated in the definition are of a single type or class, and have one salient characteristic in common. They are all private in their nature, being either individuals or private corporations or associations or representatives thereof.

This enumeration of a restricted class of persons, and the presumably deliberate omission of any reference to states, cities or other public bodies or agencies, indicate an intention on the part of Congress to confine the Commission's jurisdiction to private individuals and private persons, and not to extend it to states or political subdivisions or administrative agencies thereof.

The definition appearing in Section 1 of the Shipping Act, 1916, as amended is in contrast with language used in other Federal statutes.

See for example, Title 50, "War", Section 124 of the U. S. Code, there the term "Person" is defined to include:

> "States, Territories, the District of Columbia, Alaska, and other dependencies of the United States, and *municipal subdivisions* thereof, individual citizens, firms, associations, societies, and corporations of the United States and of other countries at peace with the United States."

See, also, Title 7, "Agriculture", Sec. 16, U. S. C. —Secretary of Agriculture authorized to cooperate with

> "Any department or agency of the Government, any State, Territory, District, or possession, or department, agency, or *political subdivision* thereof, or any person",

and Sections 545 and 587, Title 7, U. S. C., where similar language appears.

See, also, Title 33, "Navigation and Navigable Waters," Sec. 702d-1, U. S. C.:

> "Any citizen, association, railroad, or other corporation, state or public agency thereof",

and, also, Sections 565 and 592, Title 33, U. S. C.:

> "Any state, municipality, corporation, firm, district, or individual,"

and, also, Section 396, Title 43, U. S. C.

From a consideration of the definition of the word "person", as used in all of the above mentioned Acts; it would seem to be a reasonable conclusion that when the word "person" as used in any Act of Congress is intended to include a State or a political subdivision thereof, the statute expressly so states, whether the statute is regulatory in nature or calls for cooperation between the Federal Government and a State or a subdivision thereof. A further inference is justified that where the definition of the word "person", as used in any Act of Congress does not expressly include a State or a subdivision thereof, it is the intention of Congress that a State or political subdivision thereof is not so included.

Commenting further on the language of the Shipping Act, 1916, as amended, it is to be noted that in Section 1 definitions of terms occur in the following order: the terms "common carrier by water in foreign commerce", "common carrier in interstate commerce", "common carrier by water". Then in paragraph four there is given a definition of the expression "other persons subject to this act".

After taking pains to state what this expression shall include, is it to be thought that Congress intended to state a part only of the groups or organizations which should be so included, and leave the rest to the imagination of the law-enforcing agency? Is it not a much more reasonable interpretation of the Act to ascribe to Congress the intent to include

every group and organization that would come within the expression?

The nonaction of the United States Maritime Commission and its predecessor officers and boards having authority to enforce the Shipping Act, 1916, is significant.

Although the Act has been in force since 1916, it was only very recently that it was first sought to be enforced against a State. This is a very strong indication that the executive officers charged with its enforcement did not think that it was intended to apply to a State. *United States* v. *Cooper Corporation*, 312 U. S. 600, supra.

Summarizing, it seems clear after a consideration of the subject matter, the context, the legislative history and the executive interpretation of the statute that it was not the intent of Congress that the Act should apply to a State or a political subdivision thereof.

B. Neither of the appellants is an "other person subject to this act" within the meaning of the Shipping Act, 1916, as amended, for the additional reason that neither is carrying on the business of furnishing wharfage, dock, warehouse, or other terminal facilities in connection with a common carrier by water, or any business whatsoever

It clearly appears from the evidence in this case that the State is not carrying on the business of furnishing wharfage, dock, warehouse, or other terminal facilities "in connection with a common

carrier by water", or any other business. That the State is not engaged in a "business" of any kind appears from the testimony of Mark H. Gates, Secretary of the Board of State Harbor Commissioners for San Francisco Harbor, to the effect that under the laws of the State of California, the Board of State Harbor Commissioners must raise sufficient money to pay all of its expenses and cannot raise any more than that. (R. 473, 489, 490.) (*Secs. 3080 and 3084, Harbors & Navigation Code of the State of California.*)

In *Denning* v. *State*, 123 Cal. 316, 321, 55 Pac. 1000, 1001, the Court used this language:

> "These provisions of the constitution clearly show that the state has retained the control of the harbors and frontages thereon for the use and benefit of the people, for the promotion of commerce and the general benefit of the body politic, *and not as a mere business enterprise* through which profits may accrue to the state treasury; and the statute creating the state board of harbor commissioners is intended and adapted to the execution of this purpose. * * * The fact that the board is authorized or required to collect tolls and charges for dockage and wharfage to such extent 'as will enable the commissioners to discharge the duties required of them by the act' *does not affect its character as a governmental agency.*" (pp. 321, 322). (Emphasis added.)

In any event, as shown in the proceedings in Docket No. 555 and the trial of this cause in the

Court below, neither the State of California nor the Board of State Harbor Commissioners for San Francisco Harbor is carrying on any business or any activity of any kind "in connection with a common carrier by water".

We have found no decision of any Court or administrative agency which gives an interpretation of the words "in connection with a common carrier by water". In determining the jurisdiction of the Commission, however, it is absolutely necessary to interpret these words.

As indicated in *United States Navigation Co.* v. *Cunard Steamship Co.*, 284 U. S. 474, the primary purpose of the regulatory provisions of the Shipping Act, 1916, as amended, is to regulate common carriers by water. The Act concerns itself with transportation by water, and the United States Maritime Commission is designated as the regulatory body in connection with water carriers.

To interpret the words, "in connection with a common carrier by water" as applying to wharf operations only to the extent that such operations *form part of the act of water transportation*, is consistent not only with the precise language of the Shipping Act, 1916, as amended, but also with the general scheme which Congress apparently had in mind in enacting this statute—the regulation of transportation by water in a manner generally similar to the regulation of transportation by rail under the Interstate Commerce Act. If Congress

had cared to extend the application of the Act to other transactions, it would have been easy to use appropriate language to effect such purpose.

The facts adduced at the hearing of this proceeding relating to the demurrage charges of these respondents for inbound and outbound shipments show conclusively that these respondents do not perform any handling, servicing or moving services in connection with any acts of transportation.

We will first consider demurrage charges on inbound shipments. In the case of the terminals at Piers 45 and 56 and also in the case of the assigned piers, the transportation company, by virtue of its payment of rental for the pier, acquires the right to have cargo deposited thereon by a common carrier by water. Such deposit of goods on the pier is for the consignee of the goods. The facts in regard to such operation are as follows: When the ship docks, the carrier can determine from its manifest the cargo contained on the ship. From this manifest the appropriate consignees can be and are notified of the arrival of the cargo. The free time does not begin to run until the last load of cargo is deposited on the dock. (R. 495) This permits the consignee to have sufficient notice to enable him to remove his goods from the pier within the free time allowed. Prior to the time of the removal of the goods by the consignee the goods on an assigned pier are in the custody and subject to the control of the common carrier. Up to the time that the

goods are actually removed from the pier by the consignee the only parties who have any relations in regard to *its transportation* are the water carrier and the consignee.

Upon the expiration of the free time any demurrage charges assessed against inbound cargo are assessed against the consignee. This demurrage charge is assessed by the Board of State Harbor Commissioners, and the Board enters the transaction only because of the penalty aspect, penalizing the consignee for leaving goods on the pier beyond the free time, contrary to the proper functions of the port. In doing so, the Board is taking no part whatsoever in any agreement in regard to *transportation* of the particular goods in connection with a common carrier by water, or otherwise. Its sole object, purpose and function is to secure the early removal of the goods in order that the free flow of goods across the piers may be accelerated, thereby fully performing its governmental function in the maintenance and operation of the harbor with respect to such goods.

In the event of loss or damage to inbound shipments either during the free time or beyond the free time for which demurrage is assessed, the responsibility for this loss or damage rests upon the water carrier, or, if the goods are in the possession of a terminal, upon the terminal operator. "Exhibit 64a, page 20 (appears: R. 1082, in Evi-

dence, R. 651), under the heading of "No Responsibility Assumed" reads as follows:

> "The board assumes no responsibility for handling, insurance or otherwise, and reserves the right to terminate storage of any goods and to cause removal thereof at expense of owner."

In the case of outbound cargo, the transportation company, by virtue of its payment of rental for the pier, acquires the right to have cargo deposited thereon by the shipper and assembled and prepared by it for shipment on its vessels. The procedure in regard to such operation of deposit and preparation for shipment is as follows:

The shipper, upon advice from the steamship company as to the arrival of the vessel, will make an effort to deposit his goods on the pier so that they can be loaded upon the vessel within the free time. These shipments are received by the steamship company, acting through its own employees and agents on the pier. After deposit, the goods are in the custody of the carrier and its agents preparatory to shipment, and all handling services and services necessary for the preservation and safekeeping of the goods are performed by such employees and agents of the carrier. So far as the shipper is concerned, the *act of transportation* starts when the goods are deposited by him with the steamship company upon the pier.

If the vessel which is to carry the goods begins to load the goods within the free time, such time

does not expire until the loading is completed. (R. 506.) The free time provisions on outbound cargo are for the benefit of the steamship company or carrier in order that he may properly assemble these shipments for loading the vessel. In case the free time elapses before the ship begins to load, then demurrage charges are assessed against the ship for such time as intervenes between the expiration of the free time and the beginning of the loading.

The Board, from the time the goods are deposited on the wharf until they are loaded on the vessel, takes no part whatsoever in *handling, servicing or moving* the same and makes no charge for any such services. (R. 467, 476, 477, 496, 510.) Any charge which may be assessed against the vessel for demurrage is not a charge for any thing done by the Board in connection with *moving or transporting* the goods but rather is a charge imposed by the Board for the purpose of preventing congestion upon the pier and of promoting the prompt and free flow over such pier of the goods of all persons using the pier for transportation purposes. This is nothing more or less than the performance by the Board of its governmental and regulatory function in facilitating the movement of goods through the port, and the Board only enters that transaction because of the penalty aspects.

As is the case in connection with inbound goods, the responsibility for loss or damage of goods

deposited on the pier for shipment rests upon the water carrier from the time of such deposit.

It is submitted that both in the case of inbound and outbound cargo any charges made by the Board for demurrage are not made for any service or any act performed by the Board in **servicing, handling or transporting** the goods and hence are not made "in connection with a common carrier by water".

C. United States vs. California, 297 U. S. 175, 80 L. Ed. 567, 56 S. Ct. 421, is not authority for the proposition that the Shipping Act, 1916, as amended, applies to appellants or either of them.

United States v. *California*, supra, has been cited in argument in the Court below, as authority for the proposition that the Shipping Act, 1916, as amended, applies to appellants in this cause.

It is true that in the case of United States Maritime Commission No. 481, Wharfage Charges and Practices at Boston, Massachusetts, 2 U. S. M. C. 245, Examiner Gray concluded that the Shipping Act, 1916, as amended, applied to the Commonwealth of Massachusetts. In arriving at this conclusion, however, he relied upon and based his holding solely upon the case of *United States* v. *California*, supra, in which the Supreme Court of the United States held that the provisions of the Federal Safety Appliance Act (45 U. S. C. A. Sec. 1, et seq.) applied to the State of California when it engaged in the operation of a Belt Line Railroad.

We point out, however, that the language used in the Federal Safety Appliance Act was wholly different from the above quoted provisions of the Shipping Act, 1916, as amended, in these respects:

Section 2 of the Federal Safety Appliance Act which was alleged, in *United States* v. *California, supra*, to have been violated, provided in part:

> "It shall be unlawful for any common carrier engaged in Interstate commerce by railroad to haul or permit to be hauled on its line any car used in moving Interstate traffic not equipped with couplers coupling automatically by impact, and which can be uncoupled without the necessity of men going between the ends of the cars."

Section 6 of the same Act provided the penalty for the violation of Sections 2 to 5, inclusive, of the Act. In neither Section 2 nor Section 6, however, was there any restrictive definition of the phrase "common carrier," such as we find in Section 1 of the Shipping Act, 1916, as amended. Although the Federal Safety Appliance Act contained definitions of the term "common carrier," those definitions by the express language of the Statute did not apply to Sections 2 and 6, but only to Sections 17 and 18 and 23 to 34, inclusive, of said Act. (See Sections 20 and 22.) Here there was no necessity for the Court to determine whether a state was included within the terms "person", "corporation", "partnership" or "association." All that was necessary was for the Court to determine whether as a matter of fact the State was a common carrier engaged in

interstate commerce by railroad, and having determined that question, in the affirmative, it immediately followed that the State was subject to the provisions of the Act. The Shipping Act, 1916, as amended would be comparable to the Federal Safety Appliance Act, if, instead of providing that "other persons" should be subject to the Act and that the term "person" included corporations, partnerships and associations, it had provided that any wharfinger or owner of a wharf came within the provisions of the Act. It is sufficient, however, to say that the Shipping Act, 1916, as amended, does not by its terms specifically apply to *every wharfinger or owner of a wharf*, but, on the contrary, applies only to individuals, corporations, partnerships and associations furnishing wharfage, etc., in connection with a common carrier by water.

Had the Congress of the United States, in enacting the Shipping Act, 1916, intended that it should apply to every wharfinger or owner of a wharf, it would have been very easy to have said so in express language. It would likewise have been easy to have specifically named a State if it was intended the Act should apply to a State. This would have been the natural way of providing for the inclusion of a State, particularly in view of the well-known fact that a great number of the port facilities in this country are owned and controlled by States or political subdivisions thereof, but having knowledge of the language that was previously used in the Fed-

eral Safety Appliance Act, which included every common carrier, the Congress did not use such all-inclusive language but instead used the more specific and narrow language of "any other person, * * *," thus showing an intention not to include every wharfinger or owner of a wharf and particularly a State. By limiting the application of the Act to individuals, corporations, partnerships and associations, it is clear that it was the intention of Congress that the Act should apply only to persons and combinations of persons engaged in private business and not to governmental instrumentalities.

For the reasons hereinabove assigned, it is submitted that the Shipping Act of 1916, as amended, does not purport to apply and does not apply to either of these appellants, State of California or Board of State Harbor Commissioners for San Francisco Harbor in respect to the activities affected by the order of the United States Maritime Commission of September 11, 1941, or otherwise.

Point 3. The United States Maritime Commission Has No Jurisdiction Over Wharf Demurrage or Storage Rates

Without regard to the question whether Congress may constitutionally authorize the United States Maritime Commission to regulate rates of a State or an agency thereof owning, conducting or administering a wharf or wharf facilities, or whether Congress intended in the Shipping Act, 1916, as amended, to include a State or its agencies

within the phrase "other person," the Commission has no jurisdiction over wharf demurrage or storage whether imposed by a State or its agency or by anyone else.

The powers of the United States Maritime Commission are statutory, consequently, they are restricted to those conferred by the Act. In this respect the powers of the Maritime Commission are limited as are the powers of the Interstate Commerce Commission as shown in *New England Divisions Case,* 261 U. S. 184, 43 S. Ct. 270, 67 L. Ed. 605.

Indeed, in its final report, the Commission did not claim any right to regulate rates but claimed it has the power to affect rates by condemning them as practices in violation of Sections 16 and 17 of the Act prohibiting undue or unreasonable prejudice or disadvantage and unjust and unreasonable practices.

Sections 15 to 17, inclusive, and Sections 29 and 21 are the only sections of the Act which mention "other persons subject to the Act"; hence, we look to those sections to ascertain the powers of the Commission with reference to regulations of rates and charges of any other than a "water carrier", and, particularly, of an "other person" as defined by the Act.

Section 15 has no reference to such regulation of rates, as it relates only to the filing and contents of agreements mentioned therein.

Section 16 provides:

"That it shall be unlawful for any common carrier by water, or other person subject to this Act, either alone or in conjunction with any other person, directly or indirectly—

"First. To make or give any undue or unreasonable preference or advantage to any particular person, locality, or description of traffic in any respect whatsoever, or to subject any particular person, locality, or description of traffic to any undue or unreasonable prejudice or disadvantage in any respect whatsoever.

"Second. To allow any person to obtain transportation for property at less than the regular rates then established and enforced on the line of such carrier, by means of false classification, false weighing, false report of weight, or by any other unjust or unfair device or means.

"Third. To induce, persuade, or otherwise influence any marine insurance company or underwriter, or agent thereof, not to give a competing carrier by water as favorable a rate of insurance on vessel or cargo, having due regard to the class of vessel or cargo, as is granted to such carrier or other person subject to this Act."

There was no allegation in the proceedings before the Commission, nor was any claim made in the final report, that there was any violation by appellants of the provisions of the second and third subdivisions of Section 16.

For this reason we are concerned here only with the provisions of the first subdivision of that section.

Section 17 provides:

"That no common carrier by water in foreign commerce shall demand, charge, or collect any rate, fare, or charge which is unjustly discriminatory between shippers or ports, or unjustly prejudicial to exporters of the United States as compared with their foreign competitors. Whenever the board finds that any such rate, fare, or charge is demanded, charged, or collected it may alter the same to the extent necessary to correct such unjust discrimination or prejudice and make an order that the carrier shall discontinue demanding, charging, or collecting any such unjustly discriminatory or prejudicial rate, fare, or charge.

"Every such carrier and every other person subject to this Act shall establish, observe, and enforce just and reasonable regulations and practices relating to or connected with the receiving, handling, storing, or delivering of property. Whenever the board finds that any such regulation or practice is unjust or unreasonable it may determine, prescribe, and order enforced a just and reasonable regulation or practice."

The first paragraph, of this section by its terms, applies only to a "common carrier by water in foreign commerce". This paragraph does not mention "other person subject to this Act". The para-

graph forbids any common carrier by water in foreign commerce to "demand, charge or collect any rate, fare, or charge which is unjustly discriminatory between shippers or ports or unjustly prejudicial to exporters of the United States as compared with their foreign competitors". The paragraph also authorizes the Commission, when it finds that any such rate, fare or charge is demanded, charged or collected, "to alter the same to the extent necessary to correct such unjust discrimination or prejudice . . .".

The second paragraph of Section 17, by its terms applies to common carriers by water in foreign commerce, and also "every other person subject to this Act", and provides that every such carrier and every such other person "shall establish, observe and enforce just and reasonable regulations and practices relating to or connected with the receiving, handling, storing or delivery of property".

The paragraph further provides that when the Board finds that any such regulation or practice is "unjust or unreasonable, it may determine, prescribe and order enforced a just and reasonable *regulation or practice*".

Viewing the Section as a whole, there is a clear distinction made between the prohibitions imposed upon common carriers by water in foreign commerce and any "other persons subject to this Act". The first paragraph deals with rates, fares or charges and makes no mention whatsoever of a

regulation or a practice. The first paragraph is broad enough in its prohibitions to cover any "'charge" which is unjustly discriminatory between shippers or ports or unjustly prejudicial to exporters, etc.

By way of summary, the first paragraph is broad enough to include the whole subject of rates and charges made by a common carrier by water in foreign commerce.

The second paragraph of Section 17, however, makes no mention at all of a "rate" or a "fare" or a "charge". The paragraph is merely concerned with the "regulations and practices".

It seems obvious that if there was any intent on the part of Congress to regulate rates or charges in connection with the receiving, handling, storing or delivery of property, it would have used appropriate language to attain this object. Under commonly accepted rules of statutory construction, the failure to mention "other person" in the first paragraph of Section 17 signifies that it was the intent of Congress that such "other person" is not subject to the kind of regulation provided for in that paragraph.

By the use of this language in these two paragraphs in relation to the prohibitions against water carriers, on the one hand, and "other persons", on the other, a presumption is raised that the Legislature intended a different meaning and effect to the prohibitions; that is to say, that the prohibi-

tions in the first paragraph related to rates, charges, etc., whereas the prohibitions in the second paragraph related to something entirely different, to-wit, regulations and practices.

McCarthy v. *Board of Fire Commissioners*, 37 Cal. App. 495-497, 174 Pac. 402.

This construction of Section 17 of the Act is borne out by the provisions of Section 18. That Section relates only to common carriers by water in Interstate commerce. The first paragraph of that Section provides in part as follows:

> "That every common carrier by water in Interstate commerce shall establish, observe and enforce just and reasonable rates, fares, charges, classifications and tariffs, and just and reasonable regulations and practices *relating thereto*, and to . . . the manner and method of presenting, marking, packing and delivering property for transportation, . . . the facilities for transportation and all other matters relating to or connected with the receiving, handling, transporting, storing or delivering of property." (Emphasis ours.)

Here we have, in one sentence, duties imposed by the Statute upon every common carrier by water in Interstate commerce. These duties are of different kinds. There is a duty to establish, observe and enforce just and reasonable rates, fares and charges; another duty is to establish just and reasonable regulations and practices relating thereto, and also just and reasonable regulations

as to all other matters relating to or connected with receiving, handling, transporting, storing or delivering of property.

The fourth paragraph of this Section provides that whenever the Commission finds that any rate, fare, charge, classification, tariff, regulation or practice is unjust or unreasonable, it may enforce a just and reasonable maximum rate, fare or charge or a just and reasonable regulation or practice.

There is, then, in Section 18 the same clear distinction and separation in thought between rates, fares and charges on the one hand and regulations and practices on the other that we find in Section 17. We submit, therefore, that the only reasonable interpretation of these two Sections is that where Congress intended to vest the Commission with power to regulate rates or charges of any kind, including wharf demurrage and wharf storage, it explicitly so stated; that Congress was careful to make a clear distinction between powers vested in the Commission to regulate rates and charges, and power to enforce just and reasonable regulations or practices.

The only reasonable conclusion, therefore, is that Congress did not intend, in Section 17 of the Act or any other part thereof, to vest the Commission with any power to regulate any wharf storage or wharf demurrage rate or charge made by anyone other than a common carrier. All the power that is given to the Commission with respect

to wharf demurrage and wharf storage with respect to "every other person subject to this Act" is the enforcement of reasonable regulations and practices with respect to these matters, not involving the fixing or determination of any rates or charges.

We are not unmindful of the language used in *McNeely & Price Co.* v. *Philadelphia Piers, Inc.*, 196 Atl. 846 (Pa.), in which the Court said that the phrase "just and reasonable regulations and practices" as used in paragraph 2 of Section 17 "is comprehensive enough to give the Shipping Board (now the United States Maritime Commission) power" over "other persons subject to the Act". We submit, however, that the Court in this case held that the matter of regulation of the wharf charges on defendant's piers was under the jurisdiction of the Interstate Commerce Commission and that what the Court stated in said opinion with respect to the powers of the United States Maritime Commission was merely dicta. Furthermore, the above mentioned statement was condensed into eight lines of an opinion covering fifteen pages, and consisted merely of a bald conclusion arrived at without any reasoning whatsoever. The statement is, therefore, of no value as an authority.

It is only by construction that the Commission, contrary to the plain terms of the Act, and, we submit, by a misconstruction of them, has built up the theory that it has the power to regulate the rates

under the guise that the rates which it presumes to regulate are unjust or unreasonable regulations or practices under Section 17 and/or undue or unreasonable preferences or advantageous under Section 16.

At this point it is well to take note of the legislation which has resulted in the control which the Commission may exercise over rates of any kind.

Up to the time of the enactment of the *Intercoastal Shipping Act of 1933,* 47 Stat. 1425, 46 U. S. Code, Sec. 843, there was no requirement that water carriers should file their tariffs or give notice of tariff changes. The Merchant Marine Act of 1936 broadened the field of regulation, and the Act of June 23, 1938 (52 Stat. 964, 46 U. S. Code, Sec. 845a) for the first time gave the Commission the power to fix minimum rates of water carriers.

This last Act amended the Intercoastal Shipping Act of 1933, which, in itself, was amendatory of the Shipping Act, 1916.

The Intercoastal Shipping Act of 1933 applied only to water carriers in interstate commerce through the Panama Canal. It was amended by the Act of June 23, 1938, by adding Sections 4 and 5 reading as follows:

> "Sec. 4. Whenever the Commission finds that any rate, fare, charge, classification, tariff, regulation, or practice demanded, charged, collected, or observed by any carrier subject to the provisions of this Act is unjust or unreasonable, it may determine, prescribe, and order enforced

a just and reasonable maximum or minimum, or maximum and minimum rate, fare, or charge, or a just and reasonable classification, tariff, regulation or practice: *Provided,* That the minimum-rate provision of this section shall not apply to common carriers on the Great Lakes.

"Sec. 5. The provisions of this Act are extended and shall apply to every common carrier by water in interstate commerce, as defined in section 1 of the Shipping Act, 1916."

This is the legislation as it now stands with respect to the powers of the Commission with respect to rates of water carriers. The limitation of the power is important to note. There is no provision for the fixing of minimum rates for carriers in foreign commerce, nor even for common carriers on the Great Lakes. Most important of all, there is no mention whatsoever of the rates of "other persons subject to this Act".

This omission of any provision as to the rates of "other persons * * *" is a continuation of the legislative policy of the original Shipping Act, 1916, and indicates to a certainty that Congress did not consider that the Commission was given any power, under any of these Acts, to regulate the rates of any one other than water carriers, that is to say, that it had no power over the rates of "other persons * * *."

The Report of the Commission upon which was based the Order of September 11, 1941, finds that wharf demurrage and storage is furnished below cost and that the effect of this upon the users of

other services of the appellants, who are so situated that they cannot take advantage of the low demurrage and storage rates, is that they are required to pay the same rates for the other services as those who are advantaged by the low demurrage and storage rates. The effect then upon these other persons is of two kinds: (1) they must assume the burden of the loss so sustained by the low rates of wharfage and demurrage, or, (2) be denied hope of a downward revision of rates for such other services. The inference from this is that these users of other services are being discriminated against and therefore Sections 16 and 17 of the Shipping Act, 1916, as amended, are violated.

These conclusions in the Report are best evidenced by the following quotations therefrom:

> "Wharf demurrage is the charge accruing on cargo left in possession of the terminal beyond the free time period. The question here is whether respondents are unduly discriminating between such cargo and that removed during the free time period. The principal evidence on this point is an analysis of the cost of providing wharf storage to determine whether that class of service is self-sustaining *or is furnished at rates so low as to cast a burden upon other services.*" (R. 26) (Emphasis added.)
>
> ". . . As will be demonstrated, the present rates as a whole produce revenues which are far below the cost of the service as computed according to the Edwards-Differding formula. The

general theory of this formula is that the responsibility of providing adequate revenues for essential terminal facilities rests upon the cargo and the carrier. The charge for each service is made to cover the direct cost incurred in rendering the service and some portion of the joint or overhead cost which are properly attributable to it." (R. 29)

"The foregoing analysis of costs shows unmistakably that users of wharf storage service are not providing their proper share of essential terminal revenues. It must be apparent also that a disproportionate share of this burden is being shifted to users of other terminal services whose charges are based on rates considered to be reasonable in 1935." (R. 32)

"The next question is whether granting storage at non-compensatory rates is unduly preferential and prejudicial in violation of section 16 of the Shipping Act, 1916, and an unreasonable practice in violation of section 17 thereof. The storage cases previously mentioned, 1 U. S. M. C. 676 and 2 U. S. M. C. 48, establish two propositions. First, the furnishing of free storage facilities beyond a reasonable period results in substantial inequality of service as between shippers. Clearly the furnishing of such facilities at non-compensatory rates is merely a less serious form of the same offense. Second, any preferred treatment by charges or otherwise of certain classes of cargo results in a discrimination against other cargo." (R. 33)

And, lastly, it is said:

"Oakland contends there can be no discrimination since the rates are open to all shippers alike. In a sense this is true. However, the commercial practices of those shippers who supply the major portion of tonnage handled by respondents obviously do not permit of their placing their goods in storage. Furthermore, it should not be overlooked that the practice of furnishing one service below cost has a tendency to prevent any downward revision of rates for other services however justified they may be. Clearly such a practice is unreasonable.

"The decisions cited are ample authority for condemning the existing wharf storage rates and practices as being in violation of sections 16 and 17 prohibiting undue prejudice and unreasonable practices." (R. 35)

With respect to what is stated in the last two paragraphs of the above quotations from the Report, it should be noted that the proceedings before the Commission were taken on its own initiative and not based upon complaints of shippers; indeed, there was no testimony taken at the hearing from shippers on the subject of wharf storage or demurrage rates. It would seem a legitimate conclusion from this that the users of the services of appellants did not feel that they were disadvantaged by any unreasonable practice or undue preference.

Notwithstanding the fact, however, that we find no provision whatsoever in the Act empowering the Commission to fix rates of any kind, the Com-

mission recommended that such a minimum rate be established and this recommendation was included in and made a part of the order of September 11, 1941.

In taking this action the Commission relied upon and at the trial the action was justified largely upon the basis of the decision of this Court in *Baltimore and Ohio R. R. Co. et al.* v. *United States, et al.*, 305 U. S. 507, 83 L. Ed. 318, 59 S. Ct. 284. In that case certain activities of the defendant railroad carriers were found to be illegal. (*Ex parte* 104, Part VI, *Warehousing & Storage of Property by Carriers at the Port of New York, N. Y.*, 198 I. C. C. 134; 216 I. C. C. 291, and 220 I. C. C. 102.) It was found by the Commission and by the Court that the carriers furnished warehouse space to certain shippers, which service was not included in the carriers' tariff and which was extended to these shippers at rates less than the rates which were charged other shippers for the same class of service and held by the Supreme Court to be non-compensatory.

The particular practices with respect to this storage were brought to the attention of the Commission by complaints of warehouse operators in the New York District that warehouses owned and controlled by the carriers were being operated contrary to the Interstate Commerce Act.

These practices were of two kinds: first, the furnishing of storage by the defendant carriers at the

Port of New York to selected and favored shippers at noncompensatory rates, which were below the rates of private warehousemen and below the rates which shippers over the carrier's lines, not so favored, were required to pay for such services; and, second, the furnishing by the carriers to favored shippers of so-called storage-in-transit at the Port of New York at noncompensatory rates under the carriers' rules and regulations governing this privilege.

Shippers obtaining these low storage rates from the carriers were accorded the same transportation rates westbound from New York as were charged to shippers who could not take advantage of them. With respect to these practices, this Court concluded:

> "It is immaterial that the shipper pays fair value or the market price for the extra privilege he enjoys. Section 6 (7) of the Act forbids the carrier to receive less than the published rates for transportation or to remit 'by any device' any portion of the rates.' When services, not necessary for transportation, are furnished below cost in an effort to acquire rail transportation, as was done here, this provision is violated. Since the carrier warehouse rates, as found by the Court and Commission, are not open to all shippers alike, there is violation of sections 2 and 3 (1) prohibiting discrimination and unreasonable prejudice. The rail transportation rates have charged against them the loss occasioned by

warehousing practices designed to attract a volume of rail business."

The sections of the Interstate Commerce Act referred to in the above quotation, at the time of the decision, read as follows:

"Sec. 2. If any common carrier subject to the provisions of this chapter shall, directly or indirectly, by any special rate, rebate, drawback, or other device, charge, demand, collect, or receive from any person or persons a greater or less compensation for any service rendered or to be rendered, in the transportation of passengers or property, subject to the provisions of this chapter, than it charges, demands, collects, or receives from any other person or persons for doing for him or them a like and contemporaneous service in the transportation of a like kind of traffic under substantially similar circumstances and conditions, such common carrier shall be deemed guilty of unjust discrimination, which is prohibited and declared to be unlawful.

"Sec. 3. (1) It shall be unlawful for any common carrier subject to the provisions of this chapter to make or give any undue or unreasonable preference or advantage to any particular person, company, firm, corporation, or locality, or any particular description of traffic, in any respect whatsoever, or to subject any particular person, company, firm, corporation, or locality, or any particular description of traffic, to any undue or unreasonable prejudice or disadvantage in any respect whatsoever.

"Sec. 6. . . (7) . . nor shall any carrier charge or demand or collect or receive a greater

or less or different compensation for such transportation of passengers or property, or for any service in connection therewith, between the points named in such tariffs than the rates, fares, and charges which are specified in the tariff filed and in effect at the time; nor shall any carrier refund or remit in any manner or by any device any portion of the rates, fares, and charges so specified, nor extend to any shipper or person any privileges or facilities in the transportation of passengers or property, except such as are specified in such tariffs."

It is important here to note what was said in the decision of the Interstate Commerce Commission in regard to the storage of goods in transit. We quote from that decision 216 *I. C. C.*, page 342, 343, as follows:

"In appendix III to the prior report the loss per ton on freight stored under the in transit tariffs by the trunk lines respondents during the year 1931 in the port of New York district is shown. The losses range from $1.28 to $6.18 per ton and then as now a large percentage of tonnage stored consisted of crude rubber. In most cases it is not contended on this record that the rates under in transit tariffs compensate the carriers for the cost of storage and handling. No pretense is made that the storage and handling rates on crude rubber and wood pulp are compensatory and one prominent witness for respondent when asked if he knew the *out of pocket loss incurred* in the storage and handling of crude rubber testified 'I know that those

things do not in themselves pay for handling the traffic'. This witness in effect admitted that *the storage costs, without considering the handling costs, exceed the revenues derived from the two services.*" (Emphasis added.)

It is apparent, therefore, that the Commission found that the carriers were giving the storage services mentioned by performing a function not within their duties as a carrier by rail and furnishing the service at an out-of-pocket loss, thereby placing a burden upon other customers of the carriers who could not avail themselves of this special service.

With respect to this decision, the following comments are pertinent: The Court and the Commission found that the noncompensatory warehouse services were given to certain "favored shippers", and that they were not "open to all shippers alike", the wording of the Commission's finding being:

> "It should be borne in mind that carrier-controlled warehousing facilities are not available to the general public but only to selected concerns controlling large volumes of traffic * * *." (198 *I. C. C.*, at 197)

It appears also that the basis for finding that the warehouse services were noncompensatory was that they were furnished at an *out-of-pocket loss.* (Emphasis added.)

In this respect, the situation is quite different from the practice of appellants in regard to wharf

storage and demurrage in that there is nothing in the case at bar to show that all such services were not extended to all persons who applied for them, nor is there anything to show that any shipper was favored in any respect over another. It appears, also, that in the *Baltimore and Ohio case* the *commercial* warehouses were carried on at a "substantial loss" and "resulted in serious waste", the extent of waste of space being set out in the decision; that the loss incurred by the carriers in connection with their warehouse projects during the year 1931 was $1,260,441.

Contrasted with this finding, in the case at bar it was found in the Report of the Commission (R. 37), with respect to the storage rates recommended to be established by appellants

> "It is not believed that any increases in storage rates would result in the establishment of the 4090 scale at the San Francisco assigned piers."

After considering the evidence as to cost of wharf demurrage and storage at certain of the ports about San Francisco Bay, the Commission in the instant case stated, in regard to costs at San Francisco:

> "Unit costs at other terminals could not be developed because of the accounting methods they used. However, Oakland and San Francisco submitted general data which, when considered by the cost developed by Howard, Encinal and Stockton, indicate that their rates are far from compensatory." (R. 31)

Nothing further was found as to costs at San Francisco; hence, it is impossible to state whether the alleged loss resulting from wharf demurrage and storage rates at San Francisco was or was not substantial.

Further distinguishing the *Baltimore and Ohio* case from the instant case, it must be noted that in the first named case the Court was dealing with the practices of railroads alleged to be in violation of a statute which primarily was concerned with the rates charged by interstate railroads; whereas, in the instant case, we are concerned with the practices of persons furnishing wharfage facilities under an Act which says not a word about the power to fix rates.

Of still greater significance is the fact that the order of the Interstate Commerce Commission, the validity of which was questioned in the *Baltimore and Ohio case* did not fix any rates of storage which was required to be imposed and collected by the respondent carrier, as was done in the instant case; the order simply required the respondent carriers to cease and desist from permitting such storage at rates and charges which fail to compensate the respondent for the cost of providing space.

It is clear, therefore, that the decision in the *Baltimore and Ohio* case is based on facts so different from those of the instant case that it is not an authority on the question of the power of the United States Martime Commission to fix minimum

rates which appellants may charge for wharf storage and demurrage.

We submit that the United States Maritime Commission has no jurisdiction over wharf demurrage or storage rates, and was acting beyond its jurisdiction when it purported to establish minimum rates for demurrage and storage rates by its order of September 11, 1941. (Docket 555)

Point 4. There Is No Evidence to Support the Finding of the Trial Court That the Rates of Appellants for Wharf Demurrage and Wharf Storage Were Producing Revenues Which Were Substantially Less Than the Cost of the Service, and Were Not Compensatory

The evidence in regard to cost of wharf demurrage and wharf storage on the facilities of the appellants was fragmentary, and wholly inferential. With respect to investigation of these matters, witness T. G. Differding said:

> "Mr. Townsend: May I interrupt for just a moment? When you refer to making studies of the terminals there in that last sentence, you referred to the private terminals did you not?
>
> "The Witness: This is confined entirely to private terminals. We made no physical checks of the public terminals except that the facilities under assignment, or what you choose to call it at that time the San Francisco Terminals, now called the Golden Gate Terminals, and State Terminals were using. We did make similar checks there. However, the matter of wharf de-

murrage, and the incidental charges in connection with it, were entirely under the control of the State Harbor Board and we went no further than that. In other words, as far as those two facilities are concerned, it was confined to the *services rendered other than the wharf demurrage or storage matters.*" (R. 247) (Emphasis added.)

Furthermore, the evidence showed that the Board of State Harbor Commissioners has not made any studies to develop the unit cost of wharf demurrage on the basis of the Edwards Formula and has not made any such studies on any other basis (R. 580). The accounting records of the Board are not kept in such a way that such unit costs would be readily ascertainable (R. 580).

From Exhibit No. 135 (R. 1255, 1258, in Evidence R. 539-540), it appears that in the fiscal year ending June 30, 1939, the income from tolls, and wharf demurrage were as follows: Tolls $628,339.24; Wharf Demurrage $166,341.27.

For the year ending June 30, 1940, the same items of income were: Tolls $846,312.49; Wharf Demurrage $157,421.18.

Assuming, for the sake of argument that the amounts received for demurrage were less than the cost of this service, it is impossible from the evidence taken at the proceedings before the Commission to ascertain whether the difference, if any, between each of these two amounts of $166,341.27 and $157,421.18, respectively, and the cost of the

wharf demurrage service for the respective year, as compared with the totals of the charges for those years for tolls (the only other charge to shippers which would be for the use of wharf facilities) is *substantial* or *neglible* in amount.

Consequently; even if the cost of rendering wharf demurrage and storage services were calculated on the basis of the Edwards Formula there is no basis or support for the finding that appellants' rates for these services were *substantially* less than the cost of the services, and therefore not compensatory.

In any event, these appellants contend that the basis for determining whether their rates produced revenue that was compensatory should not be the Edwards-Differding Formula but should be the out-of-pocket costs of appellants for these services.

As we have seen, the Interstate Commerce Commission found in the hearing which was the basis for the decision in *Baltimore and Ohio R. R. Co.* v. *United States, supra*, that the revenue of the carriers from warehouse services rendered to shippers was less than the out-of-pocket costs of the carriers for such service.

It should be emphasized in this connection that a public wharfinger is not a carrier. As to certain of his functions, he has no connection with a carrier but does have relations with shippers or consignees. Storage, as indicated by the decision in the above mentioned case, is not a part of transportation, and, consequently, is not a transportation

service. It is, however, one of the recognized functions of a public wharfinger.

In the case at bar there is no testimony or exhibit in the record, in short, no evidence of any kind as to the amount of the out-of-pocket costs of the appellants for wharf demurrage and storage.

In the absence of a showing that appellants' out-of-pocket expenses for these services, exceeded the revenues from the services, it follows that no burden is cast upon the users of other services, and there is no discrimination in violation of Section 16 or Section 17 of the Shipping Act, 1916, as amended, or otherwise.

In *Skinner & Eddy Corporation* v. *United States*, 249 U. S. 557, 63 L. Ed. 772, 39 S. Ct. 375, the Court (Opinion of Mr. Justice Brandeis), speaking of the limits of the rate regulating power of the Interstate Commerce Commission, said, at page 464:

> "In construing this provision it is important to bear in mind the limits of the Commission's control over rates. Neither the Act to Regulate Commerce nor any amendment thereof has taken from the carriers the power which they originally possessed, to initiate rates; that is, the power, in the first instance, to fix rates or to increase or reduce them. Legislation of Congress confers now upon the Commission ample powers to prevent by direct action the exaction of excessively high rates. The original act, proceeding upon the common-law rule which prohibits carriers from charging more than reason-

able rates, gave the Commission power to declare illegal one unduly high; but even after such a determination the Commission lacked the power to fix the rate which should be charged . . .

"Congress, however, steadfastly withheld from the Commission power to prevent by direct action the charging of unreasonably low rates. The common law did not recognize that the rate of a common carrier might be so low as to constitute a wrong; and Congress has declined to declare such a rule. Despite the original Act to Regulate Commerce and all amendments, railroads still have power to fix rates as low as they choose and to reduce rates when they choose. The Commission's power over them in this respect extends no further than to discourage the making of unduly low rates by applying deterrents. One such deterrent is found in the fact that low rates, because voluntarily established by the carrier, may be accepted by the Commission as evidence that other rates, actual or proposed, for comparable service are unreasonably high. . . . The voluntary making of unremuneratively low rates in important traffic may also tend to induce the Commission to resist appeals of carriers for general rate increases on the ground of financial necessities. But the main source of the Commission's influence to prevent excessively low rates lies in its power to prevent unjust discrimination . . . The order prohibiting the unjust discrimination, however, leaves the carrier free to continue the lower rate; the compulsion being that if the low rate is retained,

the rate applicable to the locality or article discriminated against must be reduced. That is, the carrier may remove discrimination either by raising the lower rate to the relative level of the higher, or by lowering the higher to the relative level of the lower, or by equalizing conditions through fixing rates at some intermediate point."

In this decision, the Court reviewed the opinion of the Interstate Commerce Commission in *Commodity Rates to Pacific Coast Terminals*, 32 I. C. C. 611. In its opinion, at page 622, the Commission said:

"We are of the opinion that these carriers should be permitted to compete for this long distance traffic so long as it may be secured at rates which clearly cover the out-of-pocket cost. . . . Since the average ton-mile revenue of these carriers is approximately 9 mills on freight traffic, it is probable that a rate which produces 45 per cent as much as *the average pays more than the out-of-pocket cost and therefore does not impose a burden upon other traffic. None of the rates proposed appear, therefore, to the charge that they pay less than the out-of-pocket cost* . . . ." (Emphasis added.)

In 26 I. C. C. 20, 27, the Commission said:

"Anything above the out-of-pocket cost of handling is a contribution to general expenses, and to that extent tends to relieve rather than burden other traffic * * *"

The reason for the rule is stated in *Boilean* v. *Pittsburgh & L. E. R. Co.*, 24 I. C. C. 129, 132, where the Commission said:

> ". . . It is a well established and generally recognized rule that if additional business can be taken on at rates which will contribute at least a little in additional to the actual out-of-pocket expense, the carrier will be advantaged to that extent and all its patrons benefitted to the extent to which such traffic contributes to the net revenue. It is obvious that without the amount of net contributed by this class of traffic, assuming a certain amount of revenue to be necessary, such revenue must be contributed entirely by the remaining traffic and the exclusion of this competitive traffic would increase the burden upon the other traffic to a corresponding extent."

To the same effect is *Fourth Section Violations in the Southeast*, 30 I. C. C. 153, 177:

> "It may fairly be concluded from the testimony that there is none of these rates for long-distance traffic which pays less than the additional cost of handling and their acceptance by the railways results in some net revenue and does not result in an increased burden upon traffic to and from intermediate points."

Of importance in this connection is the principle enunciated in Lake Cargo Coal Cases, 181 I. C. C.

37, 51, quoting from *Galveston Com'l. Assn.* v. *Galveston, H. & S. A. Ry. Co.*, 128 I. C. C. 349, 379:

> "The fact that the law declares unlawful only discrimination that is unjust and only prejudice that is undue indicates that if was the intent to give the carriers some latitude in fixing rates, and that distance or cost of service need not be the sole criterion by which rates shall be measured."

It is a well-established principle in rate regulation that a rate initiated by a carrier may be lower than a rate that would be allowable where a carrier contends that a rate fixed by a regulatory body is confiscatory. To make this principle clear, we quote from the opinion of the Interstate Commerce Commission in Transcontinental Cases of 1922, 74 I. C. C. 48, at pages 68-70, as follows:

> "For the intermountain interests it is argued that a rate to be reasonably compensatory to the more distant terminal point must bear its full share of operating expenses, interest on funded debt, equipment and joint facility rents, taxes, and the percentage return fixed by us pursuant to section 15a of the interstate commerce act. In support of this interpretation various court decisions are cited defining the words 'reasonably compensatory,' or words that are said to be tantamount thereto.
>
> "We are unable to accept this interpretation of the phrase 'reasonably compensatory.' So interpreted, the long-and-short-haul rule of the fourth section must become absolute or rigid

from the very nature of the case. According to this version of 'reasonably compensatory,' the rate to the farther distant point must yield its full share of the expense of utilizing the additional track mileage covered, as well as its full share of the additional expenses incident to the longer use of equipment required for the longer haul. There may be difficulty in discovering to a nicety the exact legislative intent in the amended fourth section. But the rejection of an absolute long-and-short-haul clause by both Houses of Congress is inconsistent with any construction of the phrase in question which would be equivalent in effect to an absolute clause.

"A similar but less extreme interpretation of the words 'reasonably compensatory' is urged on behalf of various State commissions in the intermountain territory. It is pointed out that there is a margin between a rate which barely escapes being confiscatory and the highest rate which a regulating body may lawfully allow. To the intermediate point a rate might approach the latter limit while a rate to a more distant point might conceivably be less and yet not so low as to be confiscatory. Seemingly, the rate to the more distant point may contribute something less than a full proportionate share of return upon investment and thus theoretically be less than a greater rate to an intermediate point. This version of 'reasonably compensatory' seems to agree with the former interpretation in that both require that the rate to the more distant point must pay

its full share of all operating expenses, but is more elastic in not requiring that it must contribute its full share to the return designated as profit. Both interpretations appear to hold in common that a 'reasonably compensatory' rate can not be less than a rate which, if imposed by a regulatory tribunal, would be adjudged nonconfiscatory.

"We are unable to accept this interpretation of the words 'reasonably compensatory' as used in the amended fourth section.

"Where a rate imposed by a regulatory body is under judicial review upon the allegation that the rate fixed is confiscatory, it has been held by the courts that a rate may not lawfully be fixed by such tribunal which is based alone on the out-of-pocket costs ascribable to that particular traffic, but that to be lawful the rate must be sufficient to cover a ratable proportion of the average cost of freight traffic generally, including a return on the property devoted to public service. To hold otherwise would compel the performance of a certain specified kind of service by the carrier at less than average cost. The extension of this principle to other classes of traffic, if pursued far enough, would bankrupt the road.

"Where, however, carriers voluntarily propose to reduce certain rates to an out-of-pocket *plus* basis in order to augment the total traffic carried, a wholly different situation is presented. The menace of confiscation is absent, for *volenti non fit injuria*; and the additional traffic, if secured with a resulting augmentation of net

revenue instead of laying a burden upon other traffic, affords the possibility of lightening the burden thereon by bringing a greater tonnage under contribution to net revenue.

"The criteria of a reasonably compensatory rate in a confiscation case are therefore essentially distinct from the criteria of a reasonably compensatory rate where carriers volunteer a reduction on certain rates to an out-of-pocket *plus* basis. In the first set of cases the carrier has presumably been charged with seeking to extract from the public which is served more than the services are reasonably worth; in the second set of cases the carrier is accused by protestants, not primarily of seeking to extort more than the service is reasonably worth to those who receive the service but of working undue discrimination as between those who can and those who can not avail themselves of the lower rates voluntarily proposed.

"The criterion of a reasonably compensatory rate suggested by the carriers has been indicated above. It is summarized in the formula 'out-of-pocket-expenses-plus-some-profit.'" (Emphasis added.)

In *Minneapolis & St. Louis R. R. Co.* v. *Minnesota*, 186 U. S. 257, 22 S. Ct. 900, 46 L. Ed. 1151, at page 268, the Court said:

". . . It sometimes happens that, for purposes of ultimate profit and of building up a future trade, railways carry both freight and passengers at a positive loss . . ."

And in *Texas & Pacific Ry. Co.* v. *United States*, 289 U. S. 627, 77 L. Ed. 1410, 53 S. Ct. 768, the Court used this language:

> "Since 1887, § 1 has forbidden that an export or import rate be unreasonably high; and since the Transportation Act, 1920, the Commission has been charged to see that the rate be not so low as to render the receipts of the business unremunerative."

Of particular relevance to the present case in the light of the record and the foregoing authorities is the opinion of Mr. Justice Cardozo in *United States* v. *Chicago, M. St. P. & P. R. Co.*, 294 U. S. 499, 55 S. Ct. 462, 79 L. Ed. 1023, at pages 505-6 of the official report:

> "The second report of the Commission is a long and discursive narrative. Two paragraphs at the end give the key to its meaning:—
>
> "'We find that the proposed rates, if permitted to become effective, would lead to a disruption of the rate structure on coal in the Indiana and related areas, thus impairing the revenue of the carriers serving those areas and their ability to provide the adequate and efficient transportation service contemplated by § 15a of the act; that they would cause a disruption of the individual groups from which the rates are proposed; and that they would cause a disruption of the long-standing rate relation existing for competitive purposes, between the several Indiana groups.

"'We find that the proposed rates would be unreasonable and in violation of §§ 1 (5) . . . and 15a (2) of the act . . .'

"The statement in the second of these paragraphs that the proposed rates would be 'unreasonable' must be read in the light of the report as a whole, and then appears as a conclusion insufficient as a finding unless supported by facts more particularly stated . . . There is no suggestion in the report that the rates have been reduced as to be less than compensatory. True they do not reach the maxima beyond which charges are too low. A zone of reasonableness exists between maxima and minima within which a carrier is ordinarily free to adjust its charges for itself . . . We lay to one side cases of discrimination or preference or rivalry so keen as to be a menace to the steady and efficient service called for by the statute . . . Those tendencies excluded, 'a carrier is entitled to initiate rates and, in this connection, to adopt such policy of rate making as to it seems best. . . .'"

Previously, the learned Justice had said at page 504:

"This court has held that an order of the Interstate Commerce Commission is void unless supported by findings of the basic or quasi-jurisdictional facts conditioning its power. *Florida* v. *United States*, 282 U. S. 194, 215, 75 L. Ed. 291, 304, 51 S. Ct. 119; *United States* v. *Baltimore & O. R. Co.*, January 7, 1935, 293 U. S. 454, ante."

That statement leads us to a consideration of the authorities indicating the extent of the judicial re-

view the appellants are entitled to in the present proceeding.

In *Federal Radio Commission* v. *Nelson Brothers Co.*, 289 U. S. 266, 77 L. Ed. 1166, 53 S. Ct. 627, Chief Justice Hughes, speaking for the Court, said at page 277:

> "A finding without substantial evidence to support it—an arbitrary or capricious finding—does violence to the law. It is without sanction of the authority conferred. And an inquiry into the facts before the Commission, in order to ascertain whether its findings are thus vitiated, belongs to the judicial province and does not trench upon, or involve the question of, administrative authority . . ."

It was said in *I. C. C.* v. *U. P. R. R. Co.*, et al., 222 U. S. 541, 547, 56 L. Ed. 308, 32 S. Ct. 108, that the findings of the Interstate Commerce Commission are final unless

> "beyond its statutory power; or . . . based on a mistake of law."

In the light of these principles let us examine the facts as disclosed by the evidence produced at the hearing before the Maritime Commission and upon which the order of September 11, 1941, was based.

First, we look at the Report of the Commission upon which was based the Order of September 11, 1943. (R. 32). The following appears on page 32:

The need for an upward revision in wharf storage rates is also evidenced by the income statements

of respondents for the calendar year 1939 or fiscal year 1940. The result of their operations is illustrated by the following table:

Table 5

	Net Income	Loss
Oakland	$78,950.67 (1)	$95,859.43 (2)
Stockton	29,447.47	99,491.55 (3)
Encinal		20,758.30
Howard		7,473.95
San Francisco	215,356.85 (4)	

1. If loss from airport operations be excluded.
2. If interest on bonds paid by City (other than interest on bonds assignable to airport) be included.
3. If revenue from county tax funds be deducted.
4. No deduction made for depreciation.

In the financial statement of the Board of State Harbor Commissioners as a part of Exhibit No. 135 (R. 1255, 1257, In Evidence R. 539), the value of the Buildings and Structures under the jurisdiction of the Board is given for the year ending June 30, 1940, as $56,750,151.63. One per cent (1%) of this amount (a very modest amount for annual depreciation) is $567,501.51, which amount is $352,144.66 in excess of the yearly net income of $215,356.85 shown above.

Now there is no evidence that this excess of $352,144.66 could possibly be made up or counterbalanced by any increase of wharf demurrage and storage rates, much less by the minimum rates

fixed by the Commission's Order. It follows therefore that it could be made up only by increasing the rates for wharfage-tolls, the only other charge made against shippers or consignees for use of the wharves.

This shows conclusively that the wharf demurrage and storage rates, if in fact too low, could not possibly have resulted in discrimination against or disadvantage or prejudice to those paying toll charges but not wharf demurrage or storage charges—certainly not in the way of preventing the lowering of rates.

There was no discrimination.

The minimum rates prescribed by the Commission in its order (R. 40, 42-43, 44-45, 62) are penalty rates as shown by these excerpts from the Report.

> "A *penalty* demurrage charge of 5¢ per day is exacted for the first five days beyond the expiration of free time. *This charge is intended to compel the removal of cargo off the dock or into storage.*" (R., p. 35.) (Emphasis added.)

And, in its conclusion in this respect, Appellee Commission held:

> "Upon consideration of all the evidence, we are of the opinion that the 4090 scale, *including the 5-cent penalty rate,* should be adopted . . ." (R., pp. 37-8.) (Emphasis added.)

Obviously, a charge which is a penalty is much higher than a charge which is merely compensatory.

In summary: The Maritime Commission has only limited jurisdiction. It purports to fix rates to prevent prejudice, disadvantage or discrimination. These rates are penalty rates, obviously higher than fully compensatory rates, and very much higher than rates which will produce out-of-pocket costs. A rate which will return out-of-pocket costs plus casts no burden on other traffic, and cannot be discriminatory. There is no evidence in the record that appellants' rates do not return out-of-pocket costs and more. There is no evidence that the revenues of appellants under present rates produce an amount substantially or at all less than cost computed on the Edwards-Differding formula. There is no evidence that the rates fixed by the Commission's order will produce sufficient revenue, when added to other revenues, to enable the appellants to square income with expenses, after allowing for depreciation.

Considering all of these facts, it is submitted that the order of the Commission of September 11, 1941, is arbitrary and capricious and beyond its jurisdiction.

Point 5. The United States Maritime Commission Has No Jurisdiction Over Wharf Storage

We have hereinabove under Point 2 of this brief urged that the appellants in charging for wharf demurrage and storage are not doing so "in connection with a common carrier by water".

In certain functions the wharf operator acts as the agent of the carrier and in certain others as agent of the shipper or consignee. The distinction is recognized in *Armour & Co.* v. *Alton R. Co. et al.* (C. C. A.-7th), 111 Fed. 2d 913, 915.

The question involved was whether the consignee of cattle could recover from the rail carrier the so-called yardage fee imposed by Union Stock Yards Company at Chicago on each head of stock passing through the yard, the theory being that this was an unloading charge which had already been paid for in the line haul rate. The Court said:

> "At the yards employees of the Yards Company unload the livestock into unloading pens located upon the company's property. For this service the company charges the carriers a certain rate which is filed with the Interstate Commerce Commission. Since this service is a rail transportation service, rendered by the carriers (through their agent, the Yards Company) for the shipper, the charge therefor is covered by the line-haul rate. *Adams* v. *Mills*, 286 U. S. 397, 52 S. Ct. 589, 76 L. Ed. 1184. On the other hand, in addition to and separate from the rendition of rail transportation services, the Yards Company also performs specified stockyard services such as holding, feeding and storing. In rendering such a special service the company is subject to the Packers and Stockyards Act, and for such services charges the packer a certain rate which is filed with the Secretary of Agriculture. 42 Stat. 159, 7 U. S. C. Secs. 181 et

seq., 201 (b)), 226 7 U. S. C. A., Secs. 181 et seq., 201 (b), 226.

"It might be said that in the rendition of a transportation service the Yards Company acts as agent of the carriers, but that in the performance of a stockyard service it acts as agent of the packer. *Adams* v. *Mills*, supra * * *. It has also been said that 'Stockyard services do not commence until unloading ends; they end when loading begins' * * *."

Swift & Co. et al. v. *United States*, 316 U. S. 216, 86 L. Ed. 1391. 62 S. Ct. 948, is in accord with this view.

That storage, other than that involved in the so-called free time period, is not part of transportation, is recognized in *Ex Parte* 104, *Propriety of Operating Practices*, New York Warehousing, in the decision in 198 I. C. C. 134, affirmed on rehearing in 216 I. C. C. at 292. The Commission said, at page 195:

"While the storage of property is clearly within the transportation service which carriers are obligated to furnish, their duty under these provisions extends only to that storage which is necessarily incidental to the transporting of such property. To be incidental business *the storage must be preliminary either to immediate transportation or immediate removal.*" (Emphasis added.)

The same view was taken in *Baltimore & O. R. Co.* v. *United States,* supra, in which the Court said at page 516:

> "Neither the complaints of the competitors of the carriers in the warehousing business nor the terms of the commission's order are directed at the involuntary storage of goods incidental to transportation. This is the period before or after shipment during which the goods occupy cars or floors without any charge above the strictly transportation rate."

The governing consideration is that wharf storage is furnished independently of the water carrier. It results from an arrangement between the shipper or consignee and the party furnishing the wharf facility, and the carrier has no interest in it. The charge for the service is not included in the carrier's compensation for transportation, and the carrier incurs no liability on its account.

Mr. Differding, one of the Commission's witnesses, takes this view in his testimony, as follows:

> "Mr. Graham: Q. Whereas, on some of the other terminals around the bay which have more space available, revenue plays an important part in this problem?
>
> "A. Yes. Witnesseth the two San Francisco piers No. 45 and 56 and the Eastbay terminals. They were built definitely for the handling of cargo for periods of time, and properly so; whereas the finger piers are the old type and they are under assignment by a *steamship operator who has no interest whatsoever in wharf*

demurrage cargo and he can't be blamed for that." (Emphasis added.) (R., p. 726.)

The definition of "other person" in the first section of the Shipping Act, 1916, is worded as follows:

"The term 'other person subject to this act' means any person not included in the term 'common carrier by water,' carrying on the business of forwarding or furnishing wharfage, dock, warehouse, or other terminal facilities *in connection with a common carrier by water.*" (Emphasis added.)

Wharf storage cannot be held to be furnished "in connection with a common carrier by water", as it is not a part of transportation. Wharf storage on a terminal facility has no more connection with transportation than storage in a warehouse conducted and operated by a party wholly unconnected with the person furnishing wharf or other terminal facilities.

We submit therefore that the Maritime Commission has no jurisdiction over wharf storage or the rates charged therefor.

Point 6. The Order of September 11, 1941, of the United States Maritime Commission Relating to Free Time, So Far As It Relates to These Appellants, Has No Support in the Evidence

We are concerned primarily with the matter of wharf demurrage and storage rates, and we attack the Commission's finding as to free time because the Government is now urging that its order in respect

to wharf storage be supported because of its effect upon the free time.

In the Court below the Government said in its brief:

> "The Commission is not making any attempt to extend its power to cover rates. The granting of excessive *free* time in itself raises no question of rates—but the discriminatory and unreasonable practices of the respondents in respect of free time cannot be effectively prevented *if by means of nominal or non-compensatory rates the terminals can continue the discrimination and unreasonableness even though to a lesser degree.* Discrimination does not cease to be such merely because it is reduced in degree.
>
> "In order to enforce the observance of reasonable and non-discriminatory regulations and practices, the Commission has also specified that the respondents shall charge compensatory rates, or rather rates more nearly compensatory than those heretofore in effect. The rates approved by the Commission are expressly found to be not in excess of cost, and the charging of such rates is necessary in order to prevent evasion of the Commission's order *for, if the respondents may fix rates after expiration of free time without any control, they can carry on with impunity the discriminatory and unreasonable practices in respect of free time.* Certainly the Commission has the incidental power to prevent evasion of its order; and its order may be justified on this ground alone." (Emphasis added.)

In view of this contention, the order of the Commission in connection with free time allowance becomes a matter of importance and it is not supported by any evidence. Therefore, it is void.

In discussing free time, the Commission says in its report:

> "* * * Generally ten days are permitted except that San Francisco allows five days in coastwise and intercoastal (in-bound) trade and seven days in the foreign and offshore trades (in-bound). But under the stress of competition, most of the larger terminals, in cases of emergencies, extend the free time either to cover the additional number of days of delay to the vessel or in the case of Oakland, to such number of days as 'is warranted and equitable in each individual case', according to the judgment of the Port Manager. This practice appears to be based on the theory that if the shipper is not at fault the terminal operator should waive the demurrage. Obviously, when demurrage is waived, transit shed space, the most valuable in the terminal, is being wasted. This involves a cost which has to be recouped somewhere and it is unreasonable that those shippers who do not use the piers beyond the free time should be forced to bear the burden, either directly or indirectly. This practice also affords an opportunity to discriminate between shippers." (R., pp. 23-4.)

It is apparent that the Commission has two objections on this matter of free time; first, that the extension of free time casts a burden on other

shippers and, secondly, that the element of discretion affords an opportunity for discrimination. Even if we concede the validity of those objections, it does not warrant the overturning of the entire free time structure. If extensions of the free time period, either on a fixed or discretionary basis, is discriminatory, that affords no foundation for an order of the Commission shortening the regular free time allowance set up in the tariffs of these petitioners. In other words, if the order of the Commission had stopped with a prohibition of extension of free time beyond that set up in the tariff, there would be some evidence in the record and some support in the Commission's findings for its order. There is no such evidence nor support for the further step of the Commission in cutting down the fixed free time period of these appellants.

Finding No. 6 of the Commission reads in its pertinent part as follows:

> "That there is a lack of uniformity in, and application of, free time rules, regulations and practices of respondents; and that the manner in which they are applied affords opportunity for unequal treatment of shippers. Said rules, regulations and practices are unduly prejudicial and preferential in violation of Section 16, and unreasonable in violation of Section 17 of the Shipping Act, 1916, as amended. We prescribe, and shall order enforced a regulation providing that free time allowances should be no greater than

the period set forth in Table 1 of this report * * *."

That table reads as follows:

	In-bound Days	Out-bound Days
Coastwise and Inland Waterway	5	5
Intercoastal	5	7
Foreign	7	7
Transshipment	10	10

Mind, we are not speaking now of any extension of free time, but of the regular fixed period which is set up in the tariffs of these petitioners.

It is submitted that there is no evidence to support the action of the Commission in cutting the regular fixed period. The following is all that the Commission has to say about it in its report:

"In *Storage of Import Property,* 1 U. S. M. C. 676, 682 (1937), we said:

The furnishing of valuable free storage facilities to certain shippers and consignees beyond a reasonable period results in substantial inequality of service as between different shippers of import traffic, and is beyond the recognized functions of a common carrier.

"And, in *Storage Charges under Agreements* 6205 *and* 6215, 2 U. S. M. C. 48, 52 (1939), we stated:

All receivers of cargo must use the piers, and any preferred treatment, by charges or otherwise, of certain classes of cargo results in discrimination against other cargo.

"Members of Northwest Marine Terminal Association grant no extensions of free time. They, as well as terminals at Los Angeles, provide 10 days' free time in intercoastal (outbound) and foreign and offshore trades. In other trades these terminals like San Francisco, grant 5 days except that at Seattle and Tacoma the time is 10 days on coastwise out-bound. The California Commission, in *Case No.* 4090, *supra*, after a study of the various factors involved in the assembling and distribution of cargo at San Francisco Bay port, location of points of origin, vessels' organizations, customs clearance, efficient loading and other matters, recommended free time periods, exclusive of Sundays and holidays, as follows:"

Then follows Table 1, above set forth.

* * * * * * *

"Counsel for the Commission recommended the prescription of these periods and exceptions thereto as reasonable regulations under Section 17 of the Shipping Act, 1916. Nearly all of the witnesses who testified on this subject favored stricter free time regulations than those now in effect. With few exceptions, respondents, in their reply briefs, showed little opposition to the periods recommended, most of their comments being directed to the exceptions proposed * * *.

"Upon consideration of the evidence outlined above, the free time period set forth in Table 1 is found to be reasonable and proper. Respondents' rules, regulations and practices with re-

spect to free time, in so far as they permit free time allowances greater than outlined in said table, exclusive of Sundays and holidays are unduly prejudicial and preferential in violation of section 16 of the Shipping Act, 1916, as amended, and unreasonable in violation of section 17 of that act * * *"

I have quoted all the pertinent evidence referred to by the report. If you eliminate the matter of the extension of the fixed period of free time allowance, there is not an iota of evidence to support the Commission's finding that the existing fixed periods of these appellants are unreasonable, preferential or prejudicial. They apply to all shippers alike. Moreover, it is definitely shown by the Commission's own report, that Los Angeles and members of the Northwest Marine Terminal Association, that is, the ports on Puget Sound and the Columbia River, allow ten days' free time in intercoastal outbound and foreign and offshore trades, and that Seattle and Tacoma allow ten days on coastwise out-bound. In the case of Appellants, under Table 1, it would be permitted to grant an allowance of only five days in coastwise out-bound and seven days in intercoastal, foreign and offshore out-bound. As the report recognizes, the existing period as provided in Appellants' tariff is ten days for out-bound intercoastal and foreign or offshore.

There is no fact adduced by the Commission in support of its order that the existing free time provisions of the Appellants' tariff are unreasonable. There is nothing in the record tending to prove them so.

It is respectfully submitted that the Commission should not be allowed to assume to itself the power to regulate rates through subterfuge.

VII

CONCLUSION

Appellants have demonstrated in this brief that the Affirmative Order of the United States Maritime Commission made and issued on September 11, 1941, in the proceedings before said Commission in Docket No. 555, so far as it relates to or affects appellants, State of California and Board of State Harbor Commissioners for San Francisco Harbor is void and of no effect and should be set aside, cancelled and annulled and the enforcement thereof perpetually enjoined for all the reasons hereinabove stated and set out in Points 1, 2, 3, 4, 5 and 6 of Appellants' Argument herein, and

The Final Decree of the United States District Court of the United States for the Northern District of California, Southern Division, sitting as a

Statutory Three-Judge Court, appealed from by the said appellants, should be reversed.

Respectfully submitted.

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Dated: November 5, 1943.

Due service and receipt of a copy of the within Brief of Appellants is admitted this_____ day of November, 1943.

Solicitor General of the United States

United States Attorney

Assistant United States Attorney
Attorneys for Appellees, the United States of America, and United States Maritime Commission

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1943

No. 20

STATE OF CALIFORNIA AND BOARD OF STATE HARBOR COMMISSIONERS FOR SAN FRANCISCO HARBOR,

Appellants,

vs.

UNITED STATES OF AMERICA AND UNITED STATES MARITIME COMMISSION, ENCINAL TERMINALS, HOWARD TERMINAL, AND PARR-RICHMOND TERMINAL CORPORATION,

Appellees.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF CALIFORNIA, SOUTHERN DIVISION.

REPLY BRIEF OF APPELLANTS.

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UNITED STATES OF AMERICA AND UNITED STATES MARITIME COMMISSION, ENCINAL TERMINALS, HOWARD TERMINAL, AND PARR-RICHMOND TERMINAL CORPORATION,

Appellees.

REPLY BRIEF OF APPELLANTS.

Introduction.

The only briefs filed by Appellees are those of United States of America and United States Maritime Commission. These last named Appellees will hereinafter be referred to jointly as "the Government".

On account of the rather full statements of the facts of the case at bar and the proceedings before the United States Maritime Commisison, and in the Lower Court in relation thereto, both in the Appellants' and the Government's brief,

that part of the Government's brief relating thereto will not be commented upon. Appellants therefore proceed directly to a consideration of the arguments advanced by the Government and in doing so will discuss its points in the order in which they are considered in the Government brief.

ARGUMENT.

I.

Neither of Appellants is subject to the exercise of Federal jurisdiction over their administration or operation of the State-owned wharves and Terminal facilities at San Francisco, under the Commerce Clause of the United States Constitution or otherwise.

Briefly stated, the Government, on this point, argues that the Port facilities of Appellants are "necessary factors" in the flow of the Nation's domestic and foreign commerce and thus constitute "an interstate commerce agency"; that a State does not possess authority to withdraw, by any means whatsoever, interstate commerce matters from Federal regulation; and that State or local governments which engage in any activity which may be regulated under the Federal commerce power are no less subject than are private persons to the exercise of that power, citing in support of the last statement *United States* v. *California*, 297 U. S. 175, and *Union Pacific R. Co.* v. *United States*, 313 U. S. 450. Aside from the two last named cases, all of the cases cited under this division of the Government's argument involve situations wholly unrelated to the exercise of a governmental function by a State or its agency or any subdivision thereof.

Furthermore, *Union Pacific R. Co.* v. *United States*, *supra*, does not involve port activity in any way. The Court was there concerned with the regulation of a produce market

in Kansas City, Kansas, owned and operated by Kansas City, Kansas. It is distinguishable from the case at bar for three reasons: (1) because it involves a municipality and not a State, (2) because port activities were not being regulated, (3) because the activity in which the City engaged was one which traditionally is of a private and proprietary character.

The Government has wholly ignored the demonstration in the Appellants' brief that the State of California and its agency, the Board of State Harbor Commissioners for San Francisco Harbor, in administrating and conducting the harbor of San Francisco is engaged in and exercising powers and duties of a governmental character; that port and harbor developments and operations are traditionally governmental activities, as shown by the decisions cited by Appellants; that while the United States Supreme Court has at various times considered the power of a State or a municipality to construct, maintain and administer wharves, it has never directly held that a port so conducted is subject to the commerce power of the Constitution.

The Court did not so hold in *United States* v. *California*, *supra*, for in that case the function being considered was the operation of the State Belt Railroad, an activity which has traditionally been carried on by private persons or corporations. The power of Congress to regulate ports or harbors was not considered in that case.

The question of the application of the commerce clause of the Constitution in the instant case is an open one and must therefore be decided in this case.

We stress here the nature and extent of the regulation of the State of California in its ownership and administration of San Francisco Harbor which is being attempted by the United States Maritime Commission in the present instance. The Order of the Commission of September

11, 1941, complained of by Appellants (R. 40, 41-42, 44, 45), not only provides for minimum rates of wharf demurrage and storage on the wharf facilities of Appellants, but in addition,

(1) Provides a daily rate for such charges, instead of a period rate which has heretofore been and now is established by Appellants (R. 457-458).

(2) Provides for a "handling" charge to be collected when cargo goes into storage, notwithstanding the fact that Appellants have never heretofore performed any handling services on its wharves (R. 476-477).

The order, therefore, if put into effect would revolutionize the entire plan of administration of the port, and compel the State to adopt and use a fiscal policy not of its own choice. Worse than this, the order would compel the State either to perform handling charges on its wharves, or, if it does not do so, to make a charge for work that it does not perform—an unconscionable exaction which should not and cannot constitutionally be forced upon a sovereign State.

Even if it be assumed that Congress may regulate the State in the administration of its port, it seems clear that its power of regulation is limited. Such regulation must be within reasonable bounds.

Even if Congress can constitutionally authorize regulation, and has done so, the Commission in the instant case has clearly acted in excess of jurisdiction and for that reason alone its said Order of September 11, 1941, is void and of no effect.

It is submitted that, for all the reasons given in the opening brief of Appellants, it must be held that the operation and administration of the State-owned facilities of San

Francisco Harbor by Appellants is not subject to Federal jurisdiction or control under the commerce clause of the Constitution of the United States, or otherwise, and that the particular control sought to be exercised in the instant case is in excess of the jurisdiction of the United States Maritime Commission.

II.

The Shipping Act of 1916, as amended, does not authorize regulation of Appellants as "Other Person(s) Subject to This Act".

A. Both the State of California and Its Agency, Board of State Harbor Commissioners for San Francisco Harbor, Hereinafter Called the "Board", Are Excluded by the Act's Definition of "Other Person(s) Subject to this Act".

As shown in the statement of the case in Appellants' opening brief, and also in Point 1, particularly pp. 30-34 of said brief, the Board is a regularly constituted agency of the State of California, operating under the laws of said State, chiefly the provisions of the Harbors & Navigation Code of said State. The Board, therefore, has no separate existence from the State, corporate or otherwise, and all of its acts and activities are acts and activities of the State.

The Government on pages 30, 31 and 32 of its brief refers to the definitions of Section 1 of the Shipping Act of 1916, as amended, and states that "The pertinent classification in that part of the Act is 'other person(s) subject to this Act.'" We have no quarrel with the statement on page 31 that the word "includes" is used in different senses, depending upon the intention in each case. Appellants do take issue, however, with the statements that *Ohio v. Helvering*, 292 U. S. 360 [redacted] hold that States are "persons" under similar definitions.

A reading of [redacted] cases will show that the definitions of the word "person" or "persons" considered in [redacted] cases [redacted] different from that in the above-mentioned Act.

The definition of the expression in *Ohio* v. *Helvering* was as follows: "* * * The word 'person' as used in this title, shall be construed to mean a partnership, association, company, or corporation, as well as a natural person." This is very different from the definition in Section 1 of the Shipping Act, which says that: "The term 'person' includes corporations, partnerships and associations existing under or authorized by the laws of the United States, or any State * * *"

Appellants also take issue with the statements on pages 32 and 33 of the Government's brief that the legislative history of the Shipping Act, 1916, as amended, shows that it was intended to apply to public bodies, and in particular to a sovereign State or its agency.

With respect to the statement attributed on page 33 of the Government brief to Congressman Alexander (53 Cong. Rec. 8276), we have to state that said statement is not altogether clear in its meaning and we call attention to the statement of Congressman Humphrey, immediately following the statement of Mr. Alexander, in which Mr. Humphrey said "None at all", and added that time might have been saved if this answer had been given at the outset of the colloquy.

Reading both statements it would appear that Mr. Humphrey understood that the Act was not to apply to the municipalities referred to. In any event, no reference was made to a sovereign State.

Without further discussion of this matter we here refer to the rather full treatment of the history of the Act as set

out on pages 55 to 72 of Appellants' opening brief, which, we submit, demonstrates that it was not the intention of Congress that the word "person" as used in the Shipping Act, 1916, as amended, should include a sovereign State or any of its agencies.

B. *Appellants, on Other Grounds, Are Excluded by the Definition of "Other Person(s) Subject to this Act".*

The Government on pages 34 to 39, inclusive, of its brief considers Appellants' contention that Appellants are not covered by the definition of "Other Person(s) subject to this Act" on two additional grounds: *First*, that it does not carry on the "business" of furnishing terminal facilities, and, *secondly*, that even if it does carry on such a business, it does not do so "in connection with a common carrier by water."

South Carolina v. *United States*, 199 U. S. 437, 447-448, 463, is cited in support of a denial of the State's contention in this regard.

The last named case involved the power of the Federal Government to tax the State of South Carolina and its agents in the dispensation and sale of liquors under the State's dispensary laws. The activity of the State considered in that case was one which was traditionally, and at the time of the formation of the National Government, carried on by private persons. It was not an activity which could ordinarily be considered as governmental in character. Furthermore the case showed that it was carried on by the State, through its dispensing agents, at a large profit. It was altogether reasonable, therefore, that this Court should have held that the State was engaged in the business of dispensing liquor.

The activity considered in the case of *Texas & Pacific Ry.*

Co. v. *United States*, 289 U. S. 627, was the private operation of a port by a railroad corporation. It was in no sense a governmental activity.

It is clear, therefore, that neither of these cases is authority for the proposition that the State of California or its agent, the Board, is engaged in a "business" in administering and conducting the Harbor of San Francisco.

Appellants have discussed this question at pages 75 to 82 of its opening brief, which discussion is hereby referred to, and the cases cited therein.

The facts stated at pages 30-35 of Appellants' brief together with the statutory provisions referred to in pages 33, 34 of said brief, show that the State of California in administrating the Harbor is authorized to do so and is doing so in the exercise of a governmental function, and is not conducting the Harbor as a business enterprise but rather in the interests of the people of the whole State of California, in order to promote the commerce of the State for the public good. Such activity is the very antithesis of "business" in the sense in which that term is commonly used, and it is submitted, as that term is used in the Shipping Act.

At this stage of its argument the Government also takes issue with Appellants' contention that its terminal facilities at San Francisco are not furnished "in connection with a common carrier by water". Reference is made to Appellants' brief, pages 77, 78, 81, 82 where this question is discussed, and the case of *Union Pacific R. Co.* v. *United States*, 313 U. S. 450, 462, 466, is referred to as authority that the expression above quoted is not suggestive of the "technical connotation" urged by Appellants.

As Appellants have stated in their opening brief, there is no decision as to the exact meaning of the expression "in

connection with a common carrier by water". Manifestly it must have some meaning.

The Government thinks that the expression is used to distinguish port facilities built and maintained for the accommodation of water carriers from such facilities operated and conducted as adjuncts of rail or other land carriers.

As Appellants have stated in their opening brief, the history of the Shipping Act of 1916, as amended, shows that the chief evil sought to be controlled by the legislation was the control exercised by land carriers over water carriers and the inducements offered to the latter by the former in the way of free port facilities in order to gain business and monopolize transportation of certain steamship lines. Port facilities operated in this manner by land carriers were undoubtedly in the minds of the legislators when enacting the statute and the phrase "in connection with a common carrier by water", aptly describes the relationship of such land carriers to water carriers, and imports a participation by the land carrier in the transportation service rendered by the water carrier. Of course, the facts of this case show that neither of the Appellants, at any time before or during the investigation conducted by the Commission, was taking any part in the transportation service of a water carrier. This is clearly shown in Appellants' opening brief.

The expression "in respect to the transportation of property" used in the Elkins Act (32 Stat. 847, 34 Stat. 587; 49 U. S. C. 41 (1)) is so different in its wording and so much broader in its meaning that the case of *Union Pacific R. Co.* v. *United States*, *supra*, is not helpful in determining the meaning which must be attributed to the expression "in connection with a common carrier by water" used in the Shipping Act of 1916, as amended.

III.

The Commission's order fixing maximum free time allowances and minimum demurrage and storage charges is not within the authority conferred by Sections 16 and 17 of the Act, and is not supported by the Commission's findings, which in turn are not supported by the evidence.

On pages 39 to 41 of its brief, without attempting to answer the contentions of Appellants that there is no authority given in the Shipping Act to regulate the rates of "other person(s) subject to the Act", the Government simply states that the Commission found violations of Sections 16 and 17 of the Act in connection with allowances of free time and that, by ordering Appellants with others, to observe a prescribed schedule of free time, the Commission acted within the scope of its authority under Sections 16 and 17.

A. Neither the Statute, the Findings, nor the Evidence Supports the Commission's Order Fixing Maximum Free Time Allowances.

Under this division of its argument on this question, the Government refers to the finding that certain ports, *not including California*, extended their regular free time allowances, "for such indeterminate additional time as may be necessary to cover delays in vessel sailings". It also refers to the finding that as to certain kinds of traffic, the basic 10-day free time period was unreasonable and violative of Sections 16 and 17.

It is then stated:

> "The essence of the Commission's findings as to the discriminatory nature and unreasonableness of excessive free time allowances is that this results in a wastage of valuable storage facilities, involving costs

> whose recoupment ultimately casts a burden upon non-users of the surplus period; and that the furnishing of valuable storage facilities free of charge results in substantial inequality of service among different shippers and cargoes, unduly preferring users of the surplus period over nonusers, and is beyond the 'recognized functions' of the terminals (R. I, 24)."

The basis for the position outlined in the above quotation seems to be that users of the port facilities who do not take advantage of free time allowances are burdened by the higher charges for other services, which higher charges must be made because of the "wastage of valuable storage facilities" during surplus free time periods. This argument presupposes that the loss caused by such wastage is made up by higher charges for other services in order to make the whole enterprise pay out. This argument is made in the face of the contention of the Government on page 76 of its brief that the amounts by which annual revenues fall short of annual costs incurred in terminal operations at San Francisco in 1939 and 1940 were $1,405,634 and $1,285,786, respectively.

Now if the Government is right about these shortages, it is pertinent to ask how any shipper or vessel, in taking advantage of the excessive free time, is burdened by excessive payments for other services. Certainly these large deficits cannot be made up by shortening free time, nor, if the claim of the Government as to the amount of these shortages is correct, is there any burden in the way of higher charges imposed on the non-user of free time. On the contrary, the facts relied upon by the Government show that this burden has been assumed by Appellants, the owners and administrators of the facilities. Can the Government object to this assumption of burden by a sovereign state? Isn't the burden doctrine confined to cases where the party furnishing the other services must and

does impose higher rates in order to meet its costs and earn something more in the way of profits?

Under the facts of this case there is no evidence of a burden cast upon the non-users of free time.

Furthermore, it appears that Appellants were and are not offenders as to the granting of excessive free time or extending the periods allowed by its tariff, for in the Report of the Commission (R. 23-24), it is said:

> "The uniformity of the free time period allowed at the larger terminals is more apparent than real. Generally, 10 days are permitted except that San Francisco allows 5 days in coastwise and intercoastal (inbound) trades and 7 days in the foreign and off-shore trades (inbound) * * * San Francisco grants no extensions of free time * * *."

It also appears (R. 25), that members of the Northwest Terminal Association as well as terminals at Los Angeles provide 10 days free time in inter-coastal (outbound) and foreign and off-shore trades, and that in other trades these terminals, like San Francisco, grant 5 days, except that in Seattle and Tacoma the time is 10 days on coastwise (outbound).

It therefore is clearly established that so far as the Appellants are concerned, there was no excessive free time allowance and no extensions of free time periods, hence no unreasonable or unjust practice in violation of either Section 16 or 17 of the Act.

B. Neither the statute, the findings nor the evidence supports the Commission's order fixing minimum wharf demurrage and storage charges.

Under Subsection B of Part III of its brief the Government attempts to establish the opposite of the above stated position.

First it distinguishes between demurrage and storage

charges, stating that a demurrage charge is ordinarily a penalty charge designed to clear transit space by forcing the cargo off the dock or into wharf storage on a period basis. It is then stated that wharf demurrage rates had been so reduced that it was difficult to distinguish between wharf demurrage and storage.

On page 47, reference is made to the Commission's determination of the existence of unduly preferential and unreasonable practices in connection with these charges in that they did not compensate the terminals for the services rendered and thus gave rise to the same basic evils as the excessive free time allowances.

Reference is also made to the finding of the Commission that the evidence as to the cost of these services (demurrage and storage) showed that the going rates produced revenues "far below the cost of the service" with the consequence that "users of wharf storage are not providing their proper share of essential terminal revenues", while a disproportionate share of this burden was imposed upon users of other services, for which the terminals had adopted a scale of rates previously found to be reasonable by the California Railroad Commission.

The same comment is pertinent here as that which we have hereinabove made with regard to the fanciful idea of the imposition of a burden upon users of other services consequent upon the granting of extensive free time allowances. In the case of under charges for wharf demurrage and storage charges, as well as in the case of extensive free time allowances, there can be no imposition of a burden upon the users of other services who are nonusers of the demurrage or storage privileges, unless the charges for the other services are raised to a higher level by the furnisher of such services in an endeavor to make the "business" as a whole result in a profit or at least square revenue with expenses.

It seems clear that no resulting burden is cast upon the user of such other services in a case where the party furnishing the same is, by reason of its public character and the backing of a sovereign state, privileged to render all of its services at cost or even less than cost, in the interests of the State as a whole.

That the State of California, in furnishing such other services, does so without any purpose of making a profit is clear from the provisions of law governing its activities (Sections 3080 and 3084, Harbors and Navigation Code of California); and from the data relied upon by the Government in its Brief, page 76, it would appear that the State is falling far short of coming out even on its Harbor enterprise. The extent of the alleged failure to do this, as shown by such figures, is apparent, when we compare the deficits alleged by the Government of $1,405,634 and $1,285,786 for the years 1939 and 1940 respectively, with the total revenues of $2,380,822.06 and $2,483,253.87 for the years 1939 and 1940 respectively. Exhibit No. 135 (R. 1255, 1258, In Evidence R. 539).

It is at once apparent that, if the Government figures for deficits are correct, there would have to be an increase of over 50% in total revenue in order that the Harbor revenues may equal its expenses, including depreciation, interest on bonds, etc.

Witness Differding for the Commission stated at the hearing before the Commission (R. 716), with respect to wharf demurrage and storage charges:

> "There are very substantial increases necessary in these charges to compensate the terminals even on a minimum basis, and back in 1933 we found, using the low cost facilities both as to direct and overhead expenses as well as floor space, that a minimum of 33⅓% increase was necessary and we also took into consideration the reduction in free time which we as-

sumed would result in a 10% increase in the amount of wharf demurrage for the year's operations."

A reference to Exhibit No. 135 above mentioned (R. 1277, In Evidence R. 539), shows that the collections of the Harbor of San Francisco for wharf demurrage for the year 1939 was $55,301.10, and for 1940, was $71,009.54. A 33⅓% increase of the larger of these two sums would amount to $23,669.55.

Referring again to Exhibit No. 135 (R. 1277), we call attention to the fact that the total of demurrage charges of all kinds assessed and collected at Piers 45 and 56 for the fiscal year ending June 30, 1940, of Appellants is $20,533.90. The difference between this sum and $71,009.54 is $50,565.64, the sum of demurrage collected at the so-called "assigned piers".

With respect to the effect of the order of the Commission on the amount of demurrage which will be collected on the "assigned piers" under the Order of the Commission of September 11, 1941, establishing minimum rates, the Commission said in its Report, which was the basis of the Order:

> "It is not believed that any *increases* in storage rates would result from the establishment of the 4090 scale at the San Francisco assigned piers." (R. 37) (Emphasis ours)

The 4090 scale referred to was the scale prescribed in the Order (R. 37).

Such increases in demurrage and storage charges, therefore, as will result from the order at the Port of San Francisco will be at Piers 45 and 56, provided these piers continue to be operated as terminals. (While not shown in the record, it is pertinent to observe that these terminals are now discontinued, and the Army and Navy have the

use of these piers, free from demurrage and storage charges).

If the rates ordered by the Commission should result in the desired 33⅓% increase, the amount realized therefrom would be 33⅓% of $20,533.90, or $6,844.63.

Now by reference to Exhibit No. 135 (R. 1258, In Evidence R. 539), it will be seen that for this same calendar year ending June 30, 1940, the total amount of tolls and dockage collected at the Port of San Francisco was $1,044,130.99. Simple calculation shows that $6,844.63 is 6/10 of 1% of $1,044,130.99.

It is clear, therefore, that the "burden" cast upon users of the dockage and tolls services furnished by the Board, who do not avail themselves of the wharf storage and demurrage services is 6/10 of 1% of what they pay for such other services. For every $100.00 they pay to the Board, they are burdened by an excess charge of 60 cents.

Do these facts show that the Appellants' demurrage and storage rates were producing revenues *substantially* less than cost? Clearly the difference between revenues and cost were unsubstantial to the extent of being *microscopic*, in comparison with costs of other services.

It also follows that the discrimination against non-users of these services was equally unsubstantial and trifling.

The only conclusion to be drawn from these considerations is that the asserted imposition of a burden upon such users of other services is altogether fanciful, and is unsupported by the evidence.

(1) The terms "Regulations and Practices", as used in Section 17 of the Act, do not include wharf demurrage or storage rates or charges

In endeavoring to establish the opposite of the above-stated proposition, the Government on page 50 of its Brief refers to Appellant's discussion of this question, which may be found on pages 85-94 of Appellant's Brief, and

proceeds to discuss what it terms the "normal meaning of the terms, regulations and practices".

The Government says on page 50 that these words, "regulations and practices" are fundamentally words of broad meaning, and may well include rates as well as other charges.

The breadth of the meaning of these terms must be judged by the context and by their setting in the Statute. In Section 17 of the Act, the words are used in paragraph 2 but not in paragraph 1 where only a "rate, fare, or charge" is mentioned. In Section 18, relating to a common carrier by water in Interstate Commerce, it is provided that such carrier "shall establish, observe and enforce just and reasonable rates, fares, charges, classifications and tariffs, and just and reasonable *regulations and practices* relating *thereto.*" (Italics ours.)

It is apparent that, as used in Section 18, the words "regulations and practices" are not broad in their meaning but on the contrary are narrowly limited to actions with relation to rates, fares, etc. In other words, the terms are subordinate in meaning to the meaning given to rates, fares, etc., and are used to designate actions pertaining to the application of rates, but not including rates or the amounts at which they are fixed, independently of their application.

In Section 17, however, the terms "regulations and practices" are separated entirely in thought, meaning, and application from rates or charges of any kind.

It is, therefore, submitted that we must here consider not the normal meaning of these terms but the meaning attributed to them in the Statute, and in Sections 17 and 18, respectively.

On pages 52-54 of the Government Brief is a discussion of the legislative history of the Shipping Act of 1916, as amended, in which certain language used by the Members of the Senate Sub-committee on Commerce at the time of the consideration of H. R. 15455 is quoted and commented upon.

We submit that this language, used at random, does not explain away the precise language used in the Statute and cannot be relied upon to indicate the meaning of the terms "regulations and practices" as used in the *Act*.

On pages 54-58 of the Government Brief, the case of *B. & O. R. Co.* v. *United States*, 305 U. S. 507, 513, 522, 524 is cited for the purpose of showing that the Shipping Act of 1916, as amended, authorizes the fixing of storage rates, pursuant to the power of the Commission to establish just and reasonable "regulations and practices".

In this connection referrence is made to the *United States Nav. Co.* v. *Cunard S.S. Co.*, 284 474, 481, in which this this Court, in speaking of the similarity of the Interstate Commerce Act and the Shipping Act of 1916, as amended, said:

> "It follows that the settled construction in respect of the earlier Act must be applied to the later one unless in particular instances there be something peculiar in the question under consideration or *dissimilarity in the terms of the Act relating thereto, requiring a different conclusion.*" (Italics ours.)

We submit that, in applying to the Shipping Act, 1916, as amended a construction given by this Court to the Interstate Commerce Act, we should bear in mind the above quoted language with reference to dissimilarity between the two Acts with regard to the matter under discussion.

In this connection we call attention to the close similarity between the provisions of Section 18 of the Shipping Act and Section 15(1) of the Interstate Commerce Act. Both sections relate to regulation of rates of common carriers and both provide for the establishment of "regulations and practices" in relation to *rates*.

It is submitted that both sections authorize "regulations and practices" in relation to rates, in contrast to the provisions of Section 17 of the Shipping Act which very care-

fully separates in thought and expression the words "Regulations and practices" on the one hand, and "rates" on the other.

On account of this difference in the provisions of these sections, it by no means follows that the decision of the *B. & O.* case that wharf storage rates are subject to regulation under Section 3(1) of the Interstate Commerce Act is authority for regulation by the Maritime Commission of storage rates of an "other person subject to this Act" under the provisions of Sections 16 and 17 of the Shipping Act of 1916, as amended.

In the *B. & O.* case, it would seem that the storage rates may reasonably be regulated as "regulations and practices" under the Act being construed, while on account of the "dissimilarity in the terms" of the Shipping Act, relating to "regulations and practices" of "other person(s) subject to this Act", a different conclusion would be required.

In other words, in the *B. & O.* case, a regulation and practice in regard to transportation rates was condemned, and we think such condemnation was authorized by the Interstate Commerce Act, but the holding in that case is not authority for similar action in the case at bar.

What we have here said with respect to the *B. & O.* case as an authority, applies equally to *Swayne & Hoyt, Ltd.* v. *United States*, 300 U. S. 297, 303, for, in that case, two sets of tariff rates of a common carrier by water and interstate commerce were involved, and, we think that under the provisions of Section 18 of the Shipping Act of 1916, as amended, the discrimination found by this Court to exist by reason of the two sets of transportation rates, constituted within the meaning of Section 18 "regulations and practices", which was rightly condemned under the authorization of Section 16 of the Shipping Act.

For these reasons the last named case is no more of an authority than the *B. & O.* case for the proposition that the storage rates of any "other person subject to this Act" may be regulated by the Maritime Commission as a "regulation or practice".

We see no pertinency to the matter before the Court of the discussion on pages 59-62 of the Government's Brief. All that is there said about the enforcement of orders of the Maritime Commission might just as well have been said of the order made by the Interstate Commerce Commission and the *B. & O.* case, *supra*, for in that case no rate of storage charges was fixed, the Commission going so far only as to order that the respondent carrier cease and desist from permitting such storage at rates and charges which failed to compensate the respondent railroad company for the cost of providing space.

(2) The Commission's Order was not Sustained by Its Findings nor by the Evidence Regarding Discrimination.

In view of the argument which we have hereinabove made with respect to the alleged discrimination resulting from the wharf demurrage and storage rates of these Appellants, and our demonstration that the facts established at the hearing before the Commission and shown by the record clearly show that the alleged discrimination was altogether fanciful and does not, in fact, exist, little need be said under this heading.

The Government states on page 67 of its Brief that "Shippers supplying the bulk of the terminals' traffic, as found by the Commission (R. I, 35), are not in a position to avail themselves of the below-cost storage services. Yet, such shippers are subject to the terminals' 'toll' charges (see page 5, *supra*), which they must pay in full without any

off-set from the warehousing. Likewise a burden is cast on the vessels which must pay 'dockage' and various other service charges. (See R. 716-717.)"

What we have hereinabove said about the entire absence of any burden completely refutes these conclusions, and also what is said on pages 68 and 69 under the same head.

We think it is pertinent here to add that any attempt on the part of the United States Maritime Commission or any other Federal agency to command the State of California, acting through its agency, the Board of State Harbor Commissioners for San Francisco Harbor, to so conduct the Harbor of San Francisco that it shall not lose money in the administration of the Harbor and shall not use monies derived from bond issues authorized by the people of the State for making up deficits, due to depreciation or other causes, is a high-handed attempt to interfere with governmental processes of the State, and is not authorized by the Constitution or any law of the United States.

(3) The Evidence Does Not Support the Commission's Finding That Appellants' Storage and Demurrage Charges Were Non-Compensatory.

The Government attempts on pages 69-77 to prove the opposite of the above stated proposition:

In discussing the question as to whether a burden has been cast upon parties using services furnished in connection with the administration of San Francisco Harbor other than wharf demurrage and storage, and resulting from wharf demurrage and storage rates, we have heretofore assumed the correctness of the data set out on pages 75 and 76 of the Government's Brief.

This assumption was made for the purpose of demonstrating that no such burden exists.

Appellants did not admit, however, and have not admitted

as a fact, that their wharf demurrage and storage rates are not compensatory or were not compensatory at or before the time of the hearing before the Maritime Commission.

In the Appellants' opening brief, we maintained, and now maintain, that the standard for determining whether such rates are or were compensatory should be the out-of-pocket costs of rendering the services.

In an attempt to show that Appellants' revenue from demurrage and storage at its terminals was less than its out-of-pocket costs, the Government uses data as to demurrage revenue at Piers 45 and 56 of San Francisco Harbor which, of course, constituted only a small part of the entire harbor coverage consisting of some 45 piers and wharves.

Appellants submit that any figures taken only from the activities pursued at these two piers is too sketchy and unreliable on which to base any conclusions as to the revenue derived from Harbor activities as a whole and its relation to costs for all such activities.

The cases cited by the Government in its Brief as to the probative value of data concerning only a part of a given territory or activity, do not here apply for the reason that the rates and charges for demurrage and wharfage at Piers 45 and 56 are in some cases much less than at other wharves, as shown by a comparison of the rates at those piers (R. 1086, In Evidence R. 651) with the rates which were in force at other piers (R. 1082-1083, In Evidence R. 651.)

In this connection we call attention to the fact that there was no investigation made at the hearing or by Witness Differding in connection with his various investigations with respect to costs of wharf storage and demurrage on any of the wharves of the State of California, including Piers 45 and 56, for Witness Differding stated, with respect to such investigation of cost of Piers 45 and 56:

"This is confined entirely to private terminals. We We made no physical checks of the public terminals except that the facilities under assignment, or what you choose to call it at that time the San Francisco Terminals, now called the Golden Gate Terminals, and State Terminals were using. We did make similar checks there. However, the matter of wharf demurrage, and the incidental charges in connection with it, were entirely under the control of the State Harbor Board and we went no further than that. In other words, as far as those two facilities are concerned, it was confined to the *services rendered other than the wharf demurrage or storage matters.*" (R. 247) (Italics added.)

As we have hereinabove shown, the degree to which the Appellants' wharf storage and demurrage rates were non-compensatory, if any, was negligible and wholly unsubstantial when compared, as they must be, with charges for other services of the port. Consequently it will serve no purpose to labor over the data set out on pages 74 to 77 of the Government brief. It is simply straining at a gnat.

It is clear also that any resulting discrimination was negligible and does not support either the findings of the Commission or the Order of September 11, 1941.

Conclusion.

For all of the reasons given in Appellants' opening brief and in this Reply brief, it is submitted that the final Decree of the United States District Court, appealed from by these Appellants, should be reversed and said Court directed to set aside, annul, cancel and permanently enjoin the enforcement of the Order of the United States Maritime Commission made and issued on September 11, 1941, in the proceed-

ings before said Commission in Docket No. 555, so far as it relates to these Appellants.

Respectfully submitted,

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Dated: December 4, 1943.

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Nos. 20 and 22

In the Supreme Court of the United States

OCTOBER TERM, 1943

STATE OF CALIFORNIA AND BOARD OF STATE HARBOR COMMISSIONERS FOR SAN FRANCISCO HARBOR, APPELLANTS

v.

THE UNITED STATES OF AMERICA, UNITED STATES MARITIME COMMISSION, ET AL.

CITY OF OAKLAND, APPELLANT

v.

THE UNITED STATES OF AMERICA, UNITED STATES MARITIME COMMISSION, ET AL.

BRIEF FOR THE UNITED STATES AND THE UNITED STATES MARITIME COMMISSION

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OPINIONS BELOW

The opinion of the specially constituted district court (R. I, 82–92)* is reported in 46 F. Supp. 474. The opinion of the Maritime Commission (R. I, 13–43) is reported in 2 U. S. M. C. 588.

*The roman numeral refers to the volume, the arabic to the page.

JURISDICTION

The final decree of the district court was entered on December 1, 1942 (R. I, 108). The petition for appeal was filed and allowed on December 31, 1942, in No. 20 (R. I, 111, 115), and on January 28, 1943, in No. 22 (R. I, 119–121, 124). This Court noted probable jurisdiction on April 12, 1943 (R. II, 1327–1328). The jurisdiction of this Court is invoked under Section 31 of the Shipping Act of 1916 (39 Stat. 738; 46 U. S. C. 830), the Urgent Deficiencies Act of 1913 (38 Stat. 220; 28 U. S. C. 47, 47a), and Section 238 of the Judicial Code (43 Stat. 938; 28 U. S. C. 345).[1]

STATUTES INVOLVED

The relevant portions of the Shipping Act of 1916 (39 Stat. 728; 46 U. S. C. 801 *et seq.*) are set forth in the Appendix, *infra,* pp. 78–84.

QUESTIONS PRESENTED

1. Are the wharf operations of San Francisco and Oakland harbors, conducted respectively by a State agency and a municipal agency, beyond the regulatory power of Congress when those operations are in the flow of interstate and foreign commerce?[2]

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[1] In *Swayne & Hoyt, Ltd.* v. *United States*, 300 U. S. 297, this Court entertained an appeal from a district court based on these provisions.

[2] In the district court appellants also urged a constitutional argument based on Art. I, Sec. 9, cl. 6, of the Constitution, forbidding preferences to "Ports of one State over those of

2. Does their status as State agencies remove the Board of State Harbor Commissioners for San Francisco Harbor and the Board of Port Commissioners of the City of Oakland from the statutory jurisdiction conferred on the Maritime Commission by the Shipping Act of 1916, because of the absence of specific reference to State agencies in the definition of the scope of its coverage?

3. Do appellants operate their wharves as a "business," "in connection with a common carrier by water" within the meaning of the Shipping Act of 1916?

4. Is the power to regulate free time practices and wharf demurrage and storage charges conferred on the Maritime Commission by the Shipping Act of 1916?

5. Do the findings of the Maritime Commission support its order?

6. Does the evidence support the findings?

7. Is the order of the Maritime Commission valid in so far as it compels the City of Oakland to submit agreements respecting wharf leases to it for approval?

STATEMENT

These cases are appeals from decisions sustaining an order issued, after investigation and public hearing, by the United States Maritime Commission (the "Commission"), acting under the

another." This point, decided against appellants in the district court (R. I, 92), has been abandoned in their briefs here.

provisions of the Shipping Act of 1916 (the "Act"), 39 Stat. 728, 46 U. S. C. §§ 801, *et seq.* The parts of the order in question establish maximum free time periods and minimum wharf demurrage and storage charges for all waterfront terminals, including appellants', operated in the San Francisco Bay area and direct appellant City of Oakland to file certain agreements with the Commission for its approval (R. I, 39–41).

THE APPELLANTS

Appellant State of California ("California") owns all piers and their adjunctive terminal facilities along the "commercial waterfront" in the Port of San Francisco, operating them through the Board of State Harbor Commissioners for San Francisco Harbor (the "Board"), a statutory public body charged with the general duty of providing facilities for the handling of freight and passenger traffic on the San Francisco waterfront (R. I, 140–141).[3] By statute the Board is forbidden to collect greater revenue than that needed to enable it to perform its duties of supervising the work and affairs of the Harbor and constructing the required facilities (R. I, 489–490). See California Harbors and Navigation Code, §§ 3080, 3084.

Most of its pier and terminal space is "as-

[3] See California Harbors and Navigation Code, § 1700.

signed" by the Board, subject to cancellation on thirty days' notice, to various steamship companies (R. I, 141). Office space on two of the piers, 45 and 56, respectively, is assigned to two concerns engaged in the terminal business, Golden Gate Terminal Company and State Terminal Company, Ltd. (R. I, 142, 153), which use the facilities on the piers they occupy in the performance of their terminal services, subject, however, to the Board's control and supervision (R. I, 142–143, 594–597). A section of another terminal is rented to the Islais Creek Grain Terminal Corporation, which apparently handles grain products exclusively (R. I, 144–145).

All the assignees pay the Board a rental, the operators of terminals for office space only (R. I, 141–143, 165), and turn over to it all "dockage," "toll," and "demurrage" or "storage" charges,[4] which are collected at rates established by the Board and published in its tariff (R. I, 141–142, 143–144, 148, 164–165). The assignees retain any charges they receive for various other "terminal" services they perform for shippers, con-

[4] The "dockage" charges are assessed against vessels for the privilege of docking at wharf; the "toll" charges against cargo for the privilege of transportation over or through terminal, or being loaded or discharged at terminal; and "demurrage" or "storage" charges against cargo for using the terminal facilities beyond the "free time" allowed for the assembling of cargo upon, or its removal from, the wharves (R. I, 18, 26).

signees or vessels (R. I, 143, 165).[5] Employees of the assignees perform all of the work and services involved in the receiving, loading, unloading and handling of cargo at the Board's piers (R. I, 475–477, 496). However, the Board does employ a staff of men, under the direction of a Chief Wharfinger, whose duty it is to note and record all cargo and vessel movements at all of the terminals, and to assess and collect the charges due to the Board (R. I, 147–148, 475–476).

The Board fixes the "free time" periods allowed at the facilities for the assembly of removal of cargo, and reserves the right to terminate paid storage of goods and remove them at the expense of the owner (R. I, 148; Ex. 64, R. II, 1083). Most of the goods handled at the State's facilities are transported to or from ports outside the State (cf. R. I, 589).

Appellant City of Oakland ("Oakland"), through its Board of Port Commissioners, directly operates several piers and terminals in the harbor of Oakland (R. I, 170). The city establishes the charges for all services, and fixes the free time periods at these facilities (R. I, 170, 171, 379–

[5] E. g., arranging for vessel berth, space for cargo, checking cargo to or from vessel, receiving or delivering cargo, preparing manifests and other reports, such as "over," "short," damage, etc., weighing, taring, labeling, stropping, stencilling, scraping and remarking, consolidation of car pool shipments, and handling of rolls of boxboard (Ex. 60, R. I, 790, 798–799).

380). In addition, the city leases or assigns some of its facilities to private interests. One of its lessees is Howard Terminal, which is required by the lease to pay "tolls" wharfage and dockage [to the city] at the rates charged by the City of Oakland at its other municipally owned wharves". (R. I 170, 171.) One pier is "assigned" to McCormick Steamship Company, under an agreement specifying that the latter shall not compete for business which the city can handle (R. I, 171–173). The city also leases some of its facilities to "private lumber terminal operators" (R. I, 170).

THE PROCEEDINGS BEFORE THE COMMISSION

The administrative proceedings were begun by the Commission's order of investigation, entered upon its own motion, on November 19, 1939, to determine among other things whether terminal operators in the San Francisco Bay area were violating Sections 15, 16, and 17 of the Act[6] (R. I, 125–127).

The order of investigation, as amended, named twenty-two respondents, including California, the Board, and Oakland (R. I, 127–129); the investigation was primarily concerned with the following terminal operators, comprising the principal competitors in the area: appellants, California's private terminal assignees (Golden Gate

[6] For text, see Appendix, *infra*, pp. 79–82.

Terminals and State Terminal Company, Ltd.), the three principal private operators in the Bay area, namely, Parr-Richmond Terminal Corporation, Howard Terminal and Encinal Terminals, and the Stockton Port District, operating public facilities some 80 miles inland from the Bay but nonetheless competitive with the Bay terminals (R. I, 17, 737; Ex. 64, R. II, 878).

Evidence was received at public hearings held in two stages: the first from February 13 to 21, 1940, and the second from October 7 to 9, 1940 (R. I, 134–740). So far as relevant here the evidence concerned the practices of the terminals with respect to free time periods and wharf demurrage and storage charges. The principal witness on these matters was T. G. Differding, an expert with twenty-one years of experience in traffic and transportation matters,[1] who was called by the Commission (R. I, 237–238, 241). Mr. Differding's qualifications included a term of employment by the California Railroad Commission to assist Dr. Ford K. Edwards, its transportation economist, in "an investigation and development

[1] His background included one and one-half years as traffic manager for the Parr-Richmond Terminal Corporation, a term of five months as secretary of the Marine Terminal Association of Central California, whose membership included the private terminal operators named as respondents by the Commission in this proceeding, and three and one-half years as traffic manager for the Oakland Chamber of Commerce (R. I, 238).

of cost studies on the operation of public utility wharfingers on San Francisco Bay for rate-making purposes and the establishment of rules, regulations and practices in connection therewith"—to which Mr. Differding devoted his time almost exclusively for the year of 1935 (R. I, 238–239).

This investigation had resulted in two reports, "preliminary" and "final," submitted by Messrs. Edwards and Differding to the California Railroad Commission;[8] and these reports were admitted as evidence in the instant proceeding as Exhibits 60 and 61, Mr. Differding explaining their contents and being available for cross-examination in connection therewith (R. I, 239, 242, 245–255, 261–266, 267–274). These reports set out in detail the procedure followed in the "Edwards-Differding" study, and set out the bases for the authors' general conclusions that the free time periods allowed by the terminals were too long, and that the charges they made for their various services, including wharf demurrage and storage, were far below cost (R. I, 244–245, 253, 247–252, 253–255; Ex. 60, R. I, 793–798; Ex. 62, R. II, 908–952).

[8] On the basis of these reports, the Railroad Commission issued a recommendation in conformance therewith. It did not order compliance because the publicly owned terminals were beyond the jurisdiction conferred on it by State law and to have ordered compliance by the private terminals alone would have ruined the latter. In some respects not herein involved, all the terminals voluntarily complied with the recommendation. (R. I, 17–18, 85, 262–263.)

While the study was made in 1935, Mr. Differding testified that "so far as wharf demurrage is concerned and free time, there have been no changes generally speaking at all" (R. I, 262); and also "that all of the major elements of costs entering into the providing of [demurrage] service have very materially increased since 1935,"[9] so that "if, as we stated * * *, the wharf demurrage rate structure was absurd in 1935, then under existing conditions it falls far short of approaching a compensatory basis" (R. I, 248).

As to free time, Mr. Differding's oral and documentary testimony, along with other evidence of record, established that the San Francisco Bay terminals had originally permitted only three to five days' free time but "under the pressure of competition" had increased the allowance to ten days and more;[10] that except at California's steamship-assigned terminals, the general practice was to extend the free time period on outbound cargo for such indeterminate additional time as might

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[9] Other witnesses confirmed Mr. Differding's testimony that no substantial changes had occurred in free time allowances or wharf demurrage charges since 1935, although costs had risen materially. See, e. g., R. I, 275–276, 513–514, 517, 526, 529.

[10] Appellant California allowed shorter periods, 5 or 7 days, on certain kinds of traffic at its steamship-assigned terminals, but at the piers assigned to Golden Gate and State terminals, it generally permitted 10 days as the basic allowance on all types of traffic (see R. I, 453–456).

be necessary to cover delays in vessel sailings, and that in cases of such delays appellant Oakland allowed whatever additional free time was "warranted and equitable" in each case in the judgment of its port manager; that the free time periods allowed at other Pacific Coast ports were generally shorter than at San Francisco, and that terminal operators in northwest Pacific ports allowed no extensions to cover delays in vessel sailings, since such delays were not the fault of the terminals; that most of the terminal operators in the San Francisco Bay area agreed that existing free time periods were too long and that in the long run the wastage of valuable facilities incident to excessive free time allowances cast a burden on the users of other terminal services, in the form of higher charges (R. I, 244–245, 253; Ex. 60, R. I, 797–798).

Edwards and Differding criticized excessive free time periods in these terms (Ex. 60, R. I, 797):

> If [the free time] is too long, it constitutes an uneconomic use of valuable space for which the average shipper can ill afford to pay, whether in the form of a higher toll charge or a wharf demurrage charge.
>
> In the long run every additional day's time adds to the terminal costs and eventually this cost is passed on to the consumer of the service. If the requirements of certain shippers or certain cargoes demand that

the goods remain for extended periods on the wharves, it appears as only reasonable that those enjoying this additional service should be the ones to pay for it.

In their final report, Edwards and Differding expressed the conclusion that the free time periods granted by the San Francisco Bay terminals were generally too long and set out their recommendations regarding a reasonable schedule of free time allowances (Ex. 61, R. II, 908–911).

As to demurrage and storage charges, which are assessed against cargo left beyond the free time period, the evidence dealt largely with the sufficiency of the charges to meet the cost of rendering the service involved. The heart of the record in this connection was the aforementioned Edwards-Differding study, which included an exhaustively detailed analysis of the charges for, and cost of, rendering demurrage and storage services at the principal privately operated terminals in the Bay area. (R. I, 247–255; Ex. 61, R. II, 872, 911–925, 957.) In general, this revealed that although wharf demurrage was originally a penalty charge to force goods off the dock within the time reasonably necessary to remove them, "under the influence of competition, the wharf demurrage rates have been so reduced and the rules and practices so liberalized that it is difficult to distinguish between demurrage services on the one hand and warehouse storage services on the other" (Ex-

60, R. I, 793);[11] and that a minimum increase of 33 per cent in the existing charges was required to attain a compensatory level (R. I, 248–249, 716; Ex. 61, R. II, 912). Mr. Differding testified that noncompensatory storage charges cast a burden "upon the other users of the facilities, which in this case means the vessels and those shippers who

[11] The study did not include the charges made by the public agencies, because the latter were considered beyond the statutory jurisdiction of the California Railroad Commission (R. I, 263–264; Ex. 60, R. I, 771). As to these, the record shows that the charges fixed by appellant Oakland, and by appellant California at piers 45 and 56, assigned to Golden Gate and State Terminal, are competitive with those in effect at the terminals covered by the Edwards-Differding study (R. I, 454–455). A different situation prevails at the piers assigned by California to the steamship companies. At these piers "one of the rates * * * is rather a penalty rate for the purpose of forcing cargo off the piers" (R. I, 150), amounting to 25 cents per ton for the first five days and 50 cents per ton for succeeding five-day periods (R. I, 451–452). However, there is also in force at these piers a so-called bulkhead storage" rate, granted "at the discretion of the chief wharfinger," of 12½ cents per ton for each seven days or part thereof (R. I, 265, 310, 444–446; Ex. 64a, R. II, 1083). The "bulkhead" rate, which is at the same approximate level as the demurrage and storage rates at the other terminals (see Ex. 117, R. II, 1218A), may be granted by the chief wharfinger, "when space is available and the prompt loading and discharging of a vessel will in no manner be interfered with" (R. I, 444–445, 495). There was testimony that there is generally no difference between the methods of handling cargo charged at the "demurrage" rate and that charged at the "bulkhead storage" rate, and that both types of cargo are intermingled on the piers (R. I, 270–271).

have transit cargo and do not take advantage of the wharf demurrage space" (R. I, 717).

In more detail, the Edwards-Differding study covered all phases of the operations of Howard, Encinal, and Parr-Richmond, and included Golden Gate and State Terminal except as to wharf demurrage and storage, and was based upon visual inspection of the terminals' physical property as well as examination of their records (R. I, 238–239, 246–247; Ex. 60, R. I, 820–846; Ex. 62, R. II, 950–951). An exhaustive analysis was made of each of the numerous items comprising the costs of the terminals, including labor, overhead and physical plant and equipment, service lives being calculated in determining costs of physical property; and each item of cost was painstakingly allocated among each of the various terminal services, according to the facilities employed in their performance (Ex. 61, R. II, 925–962). In particular, with reference to wharf demurrage and storage, floor space costs per square foot per month were determined and then translated into costs per ton for the principal commodities handled, for which space requirements differ according to variations in their density and bulk (R. I, 249–250; Ex. 61, R. II, 912–914, 915–917); and labor and overhead costs incidental to wharf storage and demurrage were determined, likewise on a thirty-day basis, both for "high-piling" and for the less

costly normal piling (R. I, 250–252; Ex. 61, R. II, 914–915, 917–920). On the basis of this analysis, a formula was developed for the determination of terminal costs, service by service (Ex. 61, R. II, 925–962). To deal with the basic problem of inadequate revenues, a schedule of charges was recommended which was designed to increase the existing rates by 33 percent, the minimum necessary to make the "charges compensatory under the most favorable conditions" (Ex. 61, R. II, 912, 920–920A, 925). The schedule was founded on three basic factors: (i) costs, based on the cheapest method of piling the various kinds of cargo, and on the lowest combination of handling floor space costs found among the terminals studied; (ii) the ability of consumers to pay; and (iii) competitive conditions (R. I, 246, 249–250, 252; Ex. 61, R. II, 876–878, 917, 920, 924–925).

For the purpose of the present proceeding, Mr. Differding prepared a formula for determining unit costs of wharf demurrage, patterned after that developed in their 1935 study (R. I, 256, 258–259; Ex. 63, R. II, 1044–1062). And the Commission requested the principal terminals except Parr-Richmond, whose operations were not considered representative (R. I, 711, 735–736), to prepare analyses of their demurrage and storage costs, according to this formula, for submission in evidence (R. I, 533–535). Howard, the Port District of Stockton,

and Encinal complied (R. I, 538, 540, 542),[12] but appellants did not, on the ground that their accounting methods precluded application of the formula (R. I, 569, 580). The cost analyses thus submitted[13] revealed the following data as to demurrage and storage revenues and costs at Encinal, Howard and Stockton (R. I, 30):

	Encinal year ended Oct. 31, 1939	Howard year ended Oct. 31, 1939	Stockton year ended June 30, 1940
Revenue	$24,289.35	$31,359.46	$15,935.80
Expense	59,572.98	45,033.49	34,441.72
Loss on basis of existing rates	35,283.63	13,674.03	18,505.92
Average monthly revenues per ton, all commodities	.312	.426	.645
Unit costs:			
Fixed cost per ton, excluding high piling	.336	.489	.972
High piling	.690	.372	.184
Variable costs:			
Overhead per ton per 30 days	.145	.153	.204
Floor space cost per square foot per 30 days	.057	.031	.077

Instead of the cost analysis, Oakland submitted general data covering the income and expense of its terminal operations for the year 1940 (R. I, 536–537, 563–565; Exs. 126, 126A, 126B, 127, 128, R. II, 1219–1242; Ex. 165, R. II, 1308). This disclosed an over-all loss,[14] and an average monthly

[12] Howard—Ex. 130, R. II, 1243–1253; Encinal—Ex. 140, R. II, 1292–1300; Port of Stockton—Ex. 137, R. II, 1281–1291.

[13] See footnote 12, *supra*.

[14] It showed a net income of $78,950.67, excluding loss from airport operations and interest on bonds paid by the city in that year. The inclusion of the interest paid, other than that

demurrage revenue per ton on all commodities of 24.5¢ per ton (R. I, 31; Ex. 126, R. II, 1223; Ex. 165, R. II, 1308). California submitted income and expense statements and other data covering its complete terminal operations during the fiscal years ending June 30, 1939 and 1940 (R. I, 539–540; Ex. 135, R. II, 1255–1278). These showed an overall net income designated as "Surplus to accumulated excess income for replacement of facilities and retirement of bonds," amounting to $161,416.89 [15] for 1939, and $283,942.16 for 1940 (Ex. 135, R. II, 1258) prior to sinking fund payments for redemption of bonds, amounting to $345,939.33 in each year (R. I, 583, 585–586), and without any deduction for depreciation on depreciable terminal facilities (R. I, 581–582),[16] consisting of buildings, structures and equipment, with a recorded value of $57,637,949.12 as of June 30, 1940 (Ex. 135, R. II, 1257). In addition, California submitted data disclosing an average monthly demurrage revenue per

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assignable to the city's municipal airport, revealed a loss of $95,859.33 on the terminal operations. (R. I, 32; Ex. 126, R. II, 1222.)

[15] All of the figures which follow are after elimination of items pertaining to the operations of the Belt Railroad, which the State maintains in conjunction with its pier and terminal facilities in San Francisco harbor (R. I, 140), and on which a substantial operating loss was incurred in both years (Ex. 135, R. II, 1258).

[16] No depreciation on this property has been determined or provided for since 1929 (R. I, 581).

ton, on all commodities, of 30.9¢ at piers 45 and 56 in the year 1940 (Ex. 135, R. II, 1259, 1278A).

THE COMMISSION'S DETERMINATIONS

On September 11, 1941, after exceptions had been filed to the report and recommendations of the trial examiner, and oral argument heard thereon, the Commission issued its report, findings of facts, and order (R. I, 13, 16-45).

In connection with free time, the Commission concluded that the regulations and practices of the terminals were unduly preferential and prejudicial in violation of Section 16, and unreasonable in violation of Section 17, insofar as indefinite free time was granted to cover delays in vessel sailings and to the extent that excessive time was provided by the regular allowances (R. I, 40). This conclusion was based on the findings that the practice of granting indeterminate extension affords opportunity for discrimination between shippers; and that the granting of excessive allowances involves costs the recoupment of which casts a burden upon nonusers of the excess time, and, further, prefers users of the excessive free time by affording them more service than nonusers obtain (R. I, 23–24). The regular free time allowances granted by the terminals were found excessive to the extent that they exceeded the following schedule of maximum periods, corresponding substantially to the Edwards-Differ-

ding recommendation, which the Commission ordered enforced as "reasonable and proper" (R. I, 25–26): [17]

	In-bound days	Out-bound days
Coastwise and Inland Waterway	5	5
Intercoastal	5	7
Foreign	7	7
Transshipment	10	10

In connection with wharf demurrage and storage, the Commission also held the terminals, including appellants, were engaged in preferential and unreasonable practices, violative of Sections 16 and 17 of the Act, in that they maintained noncompensatory charges for such services (R. I, 40–41). This conclusion was reached on supporting grounds akin to those underlying the condemnation of excessive free-time allowances. Stressing the results shown by the unit cost studies of record (R. I, 30–31) and the more general data submitted by appellants (R. I, 31),[18] the Commission found the rates in question yielded revenues "far below the cost of the service" (R. I, 29), with the result that users of wharf storage failed to

[17] A specific exception allowed 21 days for off-shore shipments of packaged oil, and the Commission generally authorized the terminals to make reasonable rules in connection with the schedule, making express reference in this connection to the matter of delays in vessel sailings (R. I, 26).

[18] See pp. 16–17, *supra*.

provide their share of "essential terminal revenues," while a disproportionate share of the burden was cast upon users of other services, for which more reasonable rates were in effect (R. I, 32, 40–41). It accordingly prescribed "as a reasonable practice," a schedule of minimum charges for wharf demurrage and storage consisting of the rates recommended by Edwards and Differding on the basis of their 1935 study (R. I, 35–36, 37–38). It admitted that these charges were "too low," but adopted them because the evidence as to increased costs since 1935 was too general to justify an attempt "to fix compensatory charges on individual commodities" and because this schedule would at least "(1) * * * bring about uniformity on a minimum basis * * * not in excess of the cost of the service to any of the respondents, (2) * * * remove many of the abuses disclosed by the record, and (3) * * * provide a standard from which departures can be made on individual commodities as they appear to be justified by further proof" (R. I, 36, 38).

The Commission also held that Oakland's leases to Howard and McCormick Steamship Company were subject to Section 15 of the Act and therefore required to be submitted for its approval (R. I, 19).

The Commission overruled the objection of appellants California and Oakland that they were not subject to its jurisdiction (R. I, 18–19).

PROCEEDINGS IN THE COURT BELOW

The appellants instituted separate suits in the District Court of the United States for the Northern District of California, to set aside the Commission's order insofar as it applied to them (R. I, 1, 51).

The petitions alleged, *inter alia,* that appellants were not subject to the Commission's jurisdiction; that the Commission's order was based on arbitrary determinations; that there was no evidence to support the Commission's determination and order as to the appellants; that the order exceeded the Commission's statutory authority over "other person(s) subject to this Act"; and that the order violated Article I, § 9, clause 6 of the Constitution prohibiting the preference of the ports of one State over those of another (R. I, 7–10, 56–59).

A three-judge court was convened, the two cases were consolidated, and after a hearing an interlocutory injunction was issued (R. I, 63–66). Answers to the petitions, denying the aforementioned allegations, were then filed by the United States (R. I, 66–73). Final hearings were held on February 26 and May 21, 1942 (R. I, 79–81), and thereafter, on August 20, 1942, the court filed an opinion sustaining the order of the Commission (R. I, 82–92). The court held that, irrespective of their status as public bodies, appellants were constitutionally subject to the federal

commerce power and, as "other person(s) subject to this Act," to the Commission's jurisdiction under the Shipping Act of 1916 (R. I, 86). Appellants' argument that they were not covered by the Act because the definition of "person" in Section 1 did not expressly "include" States or their subdivisions was rejected (R. I, 87–88). The court sustained the Commission's determinations regarding the unlawfulness of appellants' practices in connection with free time and in maintaining non-compensatory demurrage and storage charges—ruling that these matters and the order issued with respect thereto were within the scope of the Commission's broad authority under Sections 16 and 17 of the Act to deal with preferential or unreasonable practices on the part of any persons subject to the Act, notwithstanding that the Act did not authorize the Commission to regulate wharfinger rates as such (R. I, 89–91). The contention that the evidence was insufficient to justify the Commission's determinations and order with respect to the appellants was overruled, as was the argument that the order violated the constitutional prohibition against preferring the ports of one State over those of another (R. I, 91–92).

On December 1, 1942, the court entered final decrees dissolving the interlocutory injunction, denying the prayers for a permanent injunction, and dismissing the petitions (R. I, 108–110).

SUMMARY OF ARGUMENT

1. Congress is empowered to regulate State agencies in their operation of wharves used in the transfer and transshipment of goods in interstate and foreign commerce. Such wharves perform vital functions in the flow of commerce, clearly within the federal commerce power. As the States do not possess authority to withdraw interstate commerce from federal control the federal power extends to State agencies operating such wharves. *United States* v. *California*, 297 U. S. 175, is controlling.

2. In addition to regulating common carriers by water, the Act regulates as "other person(s) subject to this Act" those who operate wharves "in connection with a common carrier by water." While State agencies are not specifically included within the definition of "person(s)," the definition does not purport to be an exclusive one and therefore State agencies are not specifically excluded. States and their agencies have been held by this Court to be subject to other federal legislation although they were not specifically dealt with. The legislative history of the Act contains express evidence of the Congressional purpose to subject State and city operated wharves to the Act, and thus removes the scope of the Act from the realm of speculation.

Nor are appellants exempted on the ground that their facilities are not used "in connection with a

common carrier by water." This language, doubtless inserted to exempt terminals operated solely for rail and other land carriers, does not have the limiting meaning appellants search for, as the legislative history shows.

3. Section 16, forbidding water carriers and "other person(s) subject to this Act" to give unreasonable preferences, and Section 17, authorizing the Commission to regulate "practices" relating to "storing * * * of property," empower the Commission to deal with practices regarding free time and demurrage and storage charges which throw a burden on users of other terminal services.

This position is not challenged as to free time, though the order in that respect is attacked as unsupported by evidence. However, substantial evidence supports the order prescribing maximum free time periods, including an earlier report and recommendation of the California Railroad Commission which was rendered abortive by the refusal of the appellants, who were exempt from Railroad Commission orders, to acquiesce.

Appellants' contention that power to establish minimum storage charges is denied by the specific reference to rate fixing in other provisions dealing with water carriers, is untenable. Based as it is on inference, it must give way to a construction which is sanctioned by the language of the grant of power, the legislative history, prior decisions of

this Court, and the assumption that Congress intended the Act to be an effective instrument. The Act grants power to prescribe "regulations and practices" relating to "the receiving, handling, storing * * * of property;" this language is broad and would normally encompass a variety of specifics, including the power to prescribe what practices shall be pursued regarding charges for use of wharf space for storage. The legislative history shows that Congress had this meaning in mind, for at the committee hearings opposition developed to the draft bill which included ferry, towing and transfer operators in "other person(s) subject to this Act;" the ensuing discussion developed that the provision here in question would empower the Commission to regulate rate practices of such operators if the existing rates were unjust or unreasonable; the bill was amended to remove such operators from the definition of "other person." Moreover, in a statutory setting which would as well have supported the argument made here by appellants as does the Shipping Act, this Court construed a comparable provision in the Interstate Commerce Act as authorizing the Interstate Commerce Commission to condemn the charging of non-compensatory storage rates, which, as do those here, threw a burden on non-users of the storage service (*B. & O. R. Co.* v. *United States*, 305 U. S. 507). Also, in *Swayne & Hoyt, Ltd.* v. *United States*, 300 U. S. 297, this Court

construed Section 16, which prohibits preferences by "other person(s)" as well as water carriers, as prohibiting the charging of discriminatory rates and upheld a Commission order forbidding the continuation of such rates; it is unrealistic to assert that having proscribed discriminatory storage rates Congress denied the Commission the power to enforce the prohibition by order and, instead bestowed on the Commission only that power to deal with them which is possessed by every citizen—namely, the power to inform the grand jury. Finally, it is reasonable to assume that Congress intended the Commission's power to regulate "practices relating to * * * storing * * * property" to be effective, and, as experience under the Act has shown, the power to regulate free time practices is ineffective unless practices regarding storage charges also are regulated. The two are inseparable aspects of one problem—storage practices—which must be dealt with as one problem. The language of the statute, which would empower the Commission so to deal with the problem, should therefore be given its normal meaning so that the Act may have a sensible and effective construction.

The Commission's findings, that the existing storage charges were non-compensatory and therefore discriminated against those unable to use the surplus storage services and placed a burden on users of other services, fully support

the order. This conclusion follows from *B. & O. R. Co.* v. *United States*, 305 U. S. 507, and other cases upholding similar orders under the cognate Interstate Commerce Act. The order here is not invalid because, unlike the order in the *B. & O.* case, it prescribes the rate which will be deemed compensatory and hence non-discriminatory. The order merely advises the terminals in advance of what will be required of them; it is thus at least as valid as a vague order merely prohibiting the discriminatory practice and leaving each terminal to proceed at its peril in ascertaining what practices would be lawful.

The evidence adequately supports the findings. Unit cost studies developed by experts for other terminals in the same area showed that the existing storage and demurrage charges were not compensatory. The general data submitted by appellants in lieu of the detailed cost information requested showed that they operated at substantial deficits and had recently nearly doubled certain other charges; consequently it was not persuasive that a different situation prevailed as to them.

4. Section 15 clearly authorizes the Commission's action regarding Oakland's leases. Any conflict or embarrassment resulting to the city government is the consequence of a federated system of government in which the cities are subject to the federal commerce power if they engage in interstate or foreign commerce.

ARGUMENT

I

UNDER THE COMMERCE CLAUSE OF THE CONSTITUTION APPELLANTS ARE SUBJECT TO THE EXERCISE OF FEDERAL JURISDICTION OVER THEIR OPERATION OF WHARF AND TERMINAL FACILITIES

The question of appellants' amenability to the Commission's jurisdiction raises no serious constitutional issues. The federal commerce power easily reaches appellants' operation of their wharf and terminal facilities. Providing the means "of the transfer of traffic between the rail and the water carriers" (*Texas & Pacific Ry. Co.* v. *United States*, 289 U. S. 627, 634), and handling both foreign and interstate traffic, such facilities are "necessary factors" in the flow of the nation's domestic and foreign commerce and thus clearly constitute "an interstate commerce agency," subject to the federal commerce power.[19] Cf. *Stafford* v. *Wallace*, 258 U. S. 495, 516–517; *Ex parte Easton*, 95 U. S. 68, 73, 75; *Southern Pacific Terminal Co.* v. *Interstate Commerce Commission*, 219 U. S. 498, 520, *et seq.*; see also *R. R. Comm.* v. *Southern Pac. Co.*, 264 U. S. 331. Nor does ap-

[19] It is not disputed that appellants' facilities handle interstate and foreign traffic, but appellant State of California argues that its terminal operations nevertheless do not constitute interstate commerce, relying upon cases sustaining State power over ferries and wharves where Congress had not acted. Such cases have no bearing on the power of Congress to act. See *United States* v. *Darby*, 312 U. S. 100, 119.

pellants' public character carry constitutional immunity from the Commission's jurisdiction. The States do not possess authority to withdraw, by any means whatsoever, interstate commerce matters from federal regulation. See *United States* v. *Wrightwood Dairy Co.*, 315 U. S. 110, 119; *Northern Securities Co.* v. *United States*, 193 U. S. 197, 333, 344–346. Therefore, State or local governments which engage in any activity regulable under the federal commerce power are no less subject than private persons to the exercise of that power, whatever the capacity—"sovereign" or "private"—in which the activity is conducted. *United States* v. *California*, 297 U. S. 175; cf. *Union Pacific R. Co.* v. *United States*, 313 U. S. 450. As this Court declared in *United States* v. *California, supra* (297 U. S. at 183, 184, 185):

> * * * we think it unimportant to say whether the state conducts its railroad in its "sovereign" or in its "private" capacity * * *. The sovereign power of the state is necessarily diminished to the extent of the grants of power to the federal government in the Constitution. * * *
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> * * * * * * *
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> * * * The state can no more deny the power if its exercise has been authorized by Congress than can an individual.

Thus the propriety of the Commission's assertion of jurisdiction over appellants in the cases at bar depends entirely upon whether the exercise

of such jurisdiction is authorized by the Shipping Act of 1916.

II

THE SHIPPING ACT OF 1916 AUTHORIZES REGULATION OF APPELLANTS AS "OTHER PERSON(S) SUBJECT TO THIS ACT"

A. Public bodies are not excluded by the Act's Definition of "other person(s) subject to this Act."

In general, the Shipping Act of 1916 provides for regulation of two classes of persons: (1) "common carrier(s) by water" in interstate or foreign commerce, and (2) "other person(s) subject to this Act."[20] 39 Stat. 728, 46 U. S. C. § 801, *et seq.* The Act (Sec. 1, 46 U. S. C. 801, Appendix, *infra*, pp. 78–79) defines the latter term to mean "any person not included in the term 'common carrier by water,' carrying on the business of forwarding or furnishing wharfage, dock, ware-

[20] As originally enacted (39 Stat. 729), the Shipping Act of 1916 created and was administered by the United States Shipping Board. By Executive Order June 10, 1933, No. 6166, Sec. 12 (set out in note to 5 U. S. C. 132), the Board was abolished and its functions were transferred to the Department of Commerce. By Act of June 29, 1936 (49 Stat. 1987; 46 U. S. C. 1111) the United States Maritime Commission was created and the administration of the Act transferred to it. The Act of September 18, 1940 (54 Stat. 929; 49 U. S. C. 901–923; Part III, Interstate Commerce Act), which provided generally for the regulation by the Interstate Commerce Commission of carriers by water between ports in the United States, repealed all provisions of the Shipping Act inconsistent with it. However, it specifically (49 U. S. C. 920 (b) (3)) did not repeal the provisions regarding regulation of "other persons(s) subject to this Act."

house, or other terminal facilities in connection with a common carrier by water," and provides that "'person' includes corporations, partnerships, and associations, existing under or authorized by the laws of the United States, or any State, Territory, District, or possession thereof, or of any foreign country." The pertinent classification here, of course, is "other person(s) subject to this Act," who are expressly referred to in the provisions of Sections 16 and 17 of the Act (Appendix, *infra*, pp. 81–82), under which the Commission issued the order assailed in the cases at bar.

Appellants argue that they are not covered by the word "person" as defined in the Act, because there is no express declaration that person "includes" States and their subdivisions.[21] But the word "includes", which may be used in a limiting sense as the equivalent of "means", is more commonly used in an illustrative sense, equivalent to "comprehends" or "embraces". Cf. *Helvering* v. *Morgan's Inc.*, 293 U. S. 121, 125. And the language at hand suggests that "includes" was here used in the broader, less restrictive, sense of "com-

[21] California made the same contention without success in *United States* v. *California*, 297 U. S. 175, 185–186, concerning the amenability of the railroad operated in connection with the State-owned San Francisco wharves to the Federal Safety Appliance Act, which applied to "every common carrier in interstate commerce by railroad." 45 U. S. C. 1 *et seq.*

prehends", for the word "means" itself is used in other definitions in the same section (Section 1, Appendix, *infra* p. 78–79). This being so, "the natural distinction would be that where 'means' is employed, the terms and its definition are to be interchangeable equivalents, and that the verb 'includes' imports a general class, some of whose particular instances are those specified in the definition" (*Helvering* v. *Morgan's, Inc.*, 293 U. S. 121, 125, n. 1). Finally, the point is concluded by the fact that "person" is not specifically said to include individuals, and it seems clear that Congress had no intention of excluding wharves, for example, operated by individuals, from the coverage of the Act.

But the matter need not turn on refined textual analysis, for this Court, in decisions holding that States are "persons" under similar definitions in the internal revenue laws and in the Sherman Antitrust Act (*Ohio* v. *Helvering*, 292 U. S. 360, 370; *Georgia* v. *Evans*, 316 U. S. 159), has approved resort to legislative history in these matters.[22] The Congressional debates on H. R. 15455,

[22] In *Georgia* v. *Evans*, 316 U. S. 159, 161, the Court said: "Whether the word 'person' or 'corporation' includes a state or the United States depends upon its legislative environment. * * * The *Cooper* case [*United States* v. *Cooper*, 312 U. S. 600] recognized that 'there is no hard and fast rule of exclusion. The purpose, the subject matter, the context, the legislative history, and the executive interpretation of the statute are aids to construction which may indicate an

64th Cong., 1st Sess., which was enacted into the Shipping Act of 1916 (39 Stat. 728), contain evidence, specifically in point, that the legislation was designed to apply to publicly owned wharves. During discussion of a subsequently defeated amendment which would have removed "wharfage, dock, warehouse or other terminal facilities" from the scope of the Act, reference was made to the existence of great municipally owned wharves and docks, specifically at New York, Los Angeles, Seattle and San Francisco, and the question was asked whether it was intended to deprive the municipalities of control over them. 53 Cong. Rec. 8276. To this Congressman Alexander, Chairman of the House Committee on the Merchant Marine and Fisheries and manager of the bill, replied (*id.*):

> Not at all; only to prevent unjust discrimination between shippers. If they do exercise such discrimination, there is no reason why they should not be amenable to the law as well as a private person.

In this legislative setting, clearly reflecting Congress' full awareness of the important place of the publicly owned wharf and terminal facilities in the contemplated regulatory program, "the word 'include(s)' does not lend itself to such destructive significance" as appellants' argument in-

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intent, by the use of the term, to bring state or nation within the scope of the law'."

volves. Cf. *Phelps Dodge Corp.* v. *Labor Board*, 313 U. S. 177, 189, 192.[23] The purpose of the Act is to regulate commerce itself, by whomever conducted. An intent to exclude any should therefore clearly appear. What is here pointed out rebuts any such intent.

B. Appellants are not otherwise excluded by the definition of "other person(s) subject to this Act"

Appellant State of California urges that it is not covered by the definition of "other person subject to this Act" on two additional grounds: *First*, that it does not carry on the "business" of furnishing terminal facilities; and, *secondly*, that even if it does carry on such a business, it does not do so "in connection with a common carrier by water." Neither proposition is tenable.

1. California argues that its wharf terminal operations are not a "business" because they are nonprofit, as required by the California Harbors and Navigation Code (Br. California 76). But

[23] In *Union Pacific R. Co.* v. *United States*, 313 U. S. 450, the term "person" in the Elkins Act (32 Stat. 847, 34 Stat. 587; 49 U. S. C. §§ 41–45) was applied to a city, notwithstanding the absence of any available definition specifically including municipalities in the term. The Elkins Act itself contains no definition of the word at all; while the definition contained in the Interstate Commerce Act, to which the Elkins Act was supplementary, is similar to the one in issue here. See 49 U. S. C. 3 (a). And the dissenting opinion of Roberts, J., in the *Union Pacific* case, 313 U. S. 450, 475, 483–485, suggests that the question of the applicability of the statute to public bodies was carefully considered.

the nonprofit nature of the terminal operations is immaterial; the statute reaches all who "actually" furnish the terminal facilities. Cf. *South Carolina* v. *United States*, 199 U. S. 437, 447–448, 463. Nor can there be any doubt that California is "carrying on the business of * * * furnishing * * * terminal facilities," from the functional standpoint of "what it does" (cf. *United States* v. *California*, 297 U. S. 175, 181) in operating such facilities. An apt description may be borrowed from an Interstate Commerce Commission analysis, adopted by this Court, of the function of a port as an artery of commerce. "It levies toll on the traffic in substantially the same manner as do common carriers, in its charges for the use of its facilities in the transfer of traffic between the rail and water carriers" (*Texas & Pacific Ry. Co.* v. *United States*, 289 U. S. 627, 634). Certainly in exacting its "toll" for the use of its facilities (see pp. 4–6) *supra*) California carries on a "business," even in the most limited sense of "intercourse of a commercial character" (cf. *Karnuth* v. *United States*, 279 U. S. 231, 244).[24]

2. California also contends that its terminal

[24] As the lower court noted (R. I, 88), the very state legislation relied upon by California provides that the president of the Board of State Harbor Commissioners "shall supervise the conduct of the dock system, the State Belt Railway and all other departments of the harbor *business*." [Emphasis supplied.]

facilities are not furnished "in connection with a common carrier by water." This language was doubtless inserted to distinguish the terminals subjected to the Act from terminals operating solely in connection with rail and other land carriers. Appellants, however, argue that the quoted language limits the coverage of "other person subject to this Act," to persons who, in addition to performing "wharf operations" also perform "part of the act of water transportation" such as "handling, servicing or moving" services in connection with "the act of transportation" (Br. California 77, 78, 81, 82). It is urged that the State neither transports cargo as carrier, nor contracts for its transportation as shipper, and it is further urged that California "takes no part whatsoever," and makes no charge for "handling, servicing or moving" the goods, such functions under California's rental arrangements being allegedly performed by agents and employees of the water carriers, whereas California's charges constitute penalty demurrage whose sole purpose is to keep the piers clear [25]

[25] California's preoccupation with its "penalty demurrage charges" overlooks the "dockage" charges it concededly assesses against the vessels for docking at the wharves and the "toll" charges it assesses against cargo for the privilege of transportation over the piers. (See Br. California 12.) Indeed, in a real sense California can be said to participate in the transportation of the merchandise it handles by furnishing the channel for the transfer of cargo between the land and water carriers.

(*id.* pp. 78–82). The conclusion is thus urged that California furnishes no terminal facilities "in connection with a common carrier by water" and is accordingly not covered by the term "other person subject to this Act."

This argument draws no support from the language of the statute. Its weakness is immediately apparent from the crucial facts that the terminal facilities in question were built for the accommodation of common carriers by water, are in constant use by such carriers, are of practical utility only because they are so used, and are furnished for such use at a price. In such circumstances it is wholly unreal to deny that they are "furnished in connection with a common carrier by water."

Moreover, the construction thus contended for by appellant California is at odds with the Act's legislative history—which, as noted above (*supra*, pp. 32–33), discloses that Congress contemplated that the Act would apply to publicly owned facilities. It cannot be thought that Congress intended the applicability of the Act to depend upon such niceties as whether the public agency's contractual arrangements for use of its terminal facilities did or did not call for it to perform the manual functions incidental to the operation of the facilities.

In addition, the argument in question is not harmonious with this Court's construction of a

provision in the Elkins Act (32 Stat. 847, 34 Stat. 587; 49 U. S. C. 41 (1)) forbidding "any person * * * to offer * * * any * * * concession * * * in respect to the transportation of any property * * * by * * * common carrier." *Union Pacific R. Co.* v. *United States*, 313 U. S. 450, 462, 466. There the Court refused to limit the coverage of that provision to "shipper(s) or carrier(s)," notwithstanding that a subsequent clause, providing criminal penalties for its violation, in terms referred to "every person, whether carrier or shipper" who made such concessions;[26] and it ruled that the phrase "in respect to transportation" had no "technical connotation," but merely limited the forbidden concessions "to advantages or disadvantages in transportation" and had no "further effect" (313 U. S. at 466). The phrase "in connection with a common carrier by water" is no more suggestive

[26] The case reached this Court on appeal from an injunction obtained by the Interstate Commerce Commission to restrain certain persons from violating the aforementioned prohibition against concessions, in connection with a plan to promote a produce market in Kansas City, Kansas, to be served by the Union Pacific. Among other things, the plan involved the offer of cash gifts and free rentals to Missouri produce dealers who agreed to move to Kansas City, Kansas. The argument was made by certain of the appellants, who fell within neither category, that the prohibition in question applied only to "carriers" or "shippers," in view of the express reference to such persons in the clause providing for criminal penalties.

of the "technical connotation" urged here by California.[27]

III

THE COMMISSION'S ORDER FIXING MAXIMUM FREE TIME ALLOWANCES AND MINIMUM DEMURRAGE AND STORAGE CHARGES IS WITHIN THE AUTHORITY CONFERRED BY SECTIONS 16 AND 17, AND IS SUPPORTED BY THE COMMISSION'S FINDINGS, WHICH ARE IN TURN SUPPORTED BY THE EVIDENCE

Section 16 of the Act (Appendix, *infra*, pp. 81–82) declares, *inter alia*, that it is unlawful "for any common carrier by water, or other person subject to this act, * * * directly or indirectly * * * To subject any particular person, locality or description of traffic to any undue * * * prejudice or disadvantage in any respect whatsoever." Section 17 (Appendix, *infra*, p. 82) declares in part that "Every such carrier and every other per-

[27] Appellants further argue that even though they may be covered in some respects as persons furnishing terminal facilities "in connection with a common carrier by water," that phrase excludes their wharf storage service from the Act's coverage, on the theory that this is in the nature of a warehouse service furnished to the consignee, in which the water carrier has no interest.) (Br. California 122–126; Br. Oakland 102–106.) This contention is refuted by the very definition of "other person subject to this act," which specifically refers to "any person not included in the term 'common carrier by water,' carrying on the business of * * * furnishing wharfage, dock, *warehouse*, or other terminal facilities in connection with a common carrier by water." [Emphasis supplied.] Whatever may be the ultimate limits on the coverage of the term "warehouse," it plainly includes warehouse facilities operated at shipside.

son * * * shall * * * enforce just and reasonable regulations and practices relating to or connected with the receiving, handling storing, or delivering of property"; and further, that "Whenever the [Commission] finds that any such regulation or practice is unjust or unreasonable it may determine, prescribe, and order enforced a just and reasonable regulation or practice."

The Commission found violations of these provisions on the part of the appellants and other terminals, in connection with their allowances of "free time" and in connection with their charges for wharf demurrage and wharf storage. It accordingly established and ordered the terminals to observe as "just and reasonable practices" schedules of maximum free time allowances and minimum charges for wharf demurrage and wharf storage. We submit that in so doing the Commission acted within the scope of its statutory authority under Sections 16 and 17 of the Act.

The provisions in question endow the Commission with comprehensive authority "to destroy favoritism," intentional or otherwise, cf. *New Haven R. R.* v. *Interstate Com. Comm.*, 200 U. S. 361, 391, 398; *Louisville & N. R. Co.* v. *United States*, 282 U. S. 740, 749–750; *Mitchell* v. *United States*, 313 U. S. 80, 94–95.[28] And it is well set-

[28] As the lower court remarked (R. I, 90): "Section 16 of the Shipping Act is substantially identical with § 3 (1) of

tled that "the determination of the existence of forbidden preferences" and the "finding of reasonableness" involve questions of fact committed to the Commission's informed judgment (cf. *United States* v. *Trucking Co.*, 310 U. S. 344, 352; *Virginian Ry.* v. *United States*, 272 U. S. 658, 655–666), upon which its "findings of fact * * * can be disturbed by judicial decree only in cases where their action is arbitrary or transcends the legitimate bounds of their authority" (*Seaboard Air Line Ry. Co.* v. *United States*, 254 U. S. 57, 62. Cf. *United States* v. *New River Co.*, 265 U. S. 533, 542). "The judicial function is exhausted when there is found to be a rational basis for the conclusions approved by the administrative body" (*Miss. Valley Barge Co.* v. *United States*, 292 U. S. 282, 286–287). These familiar principles leave no room for invalidation of the Commission's order in these cases.

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the Interstate Commerce Act," 49 U. S. C. 3 (1). More generally, this Court has stated:

"The Shipping Act is a comprehensive measure bearing a relation to common carriers by water substantially the same as that borne by the Interstate Commerce Act to interstate common carriers by land. * * * It follows that the settled construction in respect of the earlier act must be applied to the later one, unless, in particular instances, there be something peculiar in the question under consideration, or dissimilarity in the terms of the act relating thereto, requiring a different conclusion." *United States Navigation Co.* v. *Cunard S. S. Co.*, 284 U. S. 474, 480, 481.

A. The statute, the findings and the evidence support the Commission's order fixing maximum free time allowances

Concerning free time the Commission found discriminatory in violation of Section 16 and unreasonable in violation of Section 17 the practice of a number of the terminals, not including California, of extending their "regular" free time period of ten days for such indeterminate additional time as might be necessary to cover delays in vessel sailings, and the practice of Oakland of allowing whatever additional time was "warranted and equitable in each individual case" in its port manager's judgment (R. I, 24). It also found that as to certain kinds of traffic the basic ten-day free time period offered by the terminals was unreasonable because excessive and hence violative of Sections 16 and 17 (R. I, 24–26). The Commission's order prescribed a schedule of allowances providing 5, 7 or 10 days free time, depending upon the character of the traffic, with one exception authorizing 21 days for off-shore shipments of packaged oil, and left the terminals to make reasonable rules and regulations in connection with the prescribed schedule, including the matter of delays in vessel sailings.[29]

Appellants do not contest that the statute authorizes the Commission to fix maximum free time allowances in proper cases; they assert that the findings and the evidence are here insufficient.

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[29] For the reasons for the variations, see Ex. 61, R. II. 908–911.

The essence of the Commission's findings as to the discriminatory nature and unreasonableness of excessive free time allowances is that this results in a wastage of valuable storage facilities, involving costs whose recoupment ultimately casts a burden upon nonusers of the surplus period; and that the furnishing of valuable storage facilities free of charge results in substantial inequality of service among different shippers and cargoes, unduly preferring users of the surplus period over nonusers, and is beyond the "recognized functions" of the terminals (R. I, 24).[39]

The Commission's condemnation on these grounds of the practice of granting excessive free time allowances, as unduly preferential and un-

[39] The same proposition was well stated in the Edwards-Differding preliminary report, as follows (Ex. 60, R. I, 797):

"* * * If [the free time] is too long, it constitutes an uneconomic use of valuable space for which the average shipper can ill afford to pay whether in the form of a higher toll charge or a wharf demurrage charge.

"In the long run every additional day's time adds to the terminal costs and eventually this cost is passed on to the consumer of the service. If the requirements of certain shippers or certain cargoes demand that the goods remain for extended periods on the wharves, it appears as only reasonable that those enjoying this additional service should be the ones to pay for it."

The Commission's findings concerning the extension of excessive free time allowances under the caption "free time" should be read in conjunction with the subsequent findings concerning the maintenance of noncompensatory storage charges (see p. 62, *infra*), for the Commission regarded the two practices as different forms "of the same offense" (R. I, 33).

reasonable, finds ample support in the authorities. See pp. 63–69 *infra*; cf. *Turner Lumber Co.* v. *C. M. & St. P. Ry.*, 271 U. S. 259, 262.[31]

Nor is there any merit in the contention that there was not sufficient evidence to sustain the Commission's determination that free time allowances made by the terminals, including appellants, were excessive insofar as they surpassed the limits prescribed in its order. In the language of the Commission, "nearly all of the witnesses who testified on this subject favored stricter free time regulations than those now in effect" (R. I, 25). There was also evidence that the San Francisco Bay terminals had originally allowed only three to five days' free time, but under "the pressure of competition" had extended the allowance to ten days and more (R. I, 245; Ex. 60, R. I, 797). The Commission further had before it evidence as to the free time policies in effect at other West Coast ports, showing that while 10 days was the customary allowance on foreign and off-shore trades, the customary allowance on other types of

[31] "A discrimination which is produced by charging equal rates for unequal service is prohibited by the statute just as much as one resulting from unequal rates for equal service." Stone, J., dissenting in *Texas & Pacific Ry. Co.* v. *United States*, 289 U. S. 627, 656. This should hold true in the case of a discrimination produced by a "free" service which favors certain shippers with more service than others obtain. A practice which is unduly preferential in nature is likewise inherently "unfair and unreasonable." Cf. *Union Pacific R. R.* v. *Updike Grain Co.*, 222 U. S. 215, 220.

trade was only five days (Ex. 60, R. I, 798). In addition, the evidence included the schedule of free time allowances recommended by Edwards and Differding to the California Railroad Commission for the San Francisco Bay ports after a study of their organization and traffic, which recommendation the Railroad Commission substantially adopted in its order (Ex. 61, R. II, 911).

Clearly, this evidence amply supports the Commission's finding that the free time allowances granted by the San Francisco Bay terminals were excessive. In particular, evidence of what allowances were made at other terminals "had a tendency to show what was reasonable and therefore permissible" at appellants' terminals. *O'Keefe* v. *United States,* 240 U. S. 294, 303; cf. *Youngstown Co.* v. *United States,* 295 U. S. 476, 480; *United States* v. *Northern Pacific Ry. Co.,* 288 U. S. 490, 500. And more broadly, "the evidence showed that some limitation was called for, and, in general at least, furnished the materials upon which to base it. A tribunal such as the * * * Commission, expert in (such) matters * * *, may be presumed to be able to draw inferences that are not obvious to others." *O'Keefe* v. *United States, supra,* 240 U. S. at 303. Of course, in following the recommendation of the California Railroad Commission in preference to adopting the scale of allowances in effect at other ports, slightly higher on some classes of traffic, the Commission

merely exercised its lawful discretion. Cf. *Interstate Commerce Commission* v. *Union Pacific R. R.*, 222 U. S. 541, 550; *Interstate Commerce Commission* v. *Louis. & Nash. R. R.*, 227 U. S. 88, 98; Stone, J., dissenting in *Chicago, R. I. & P. Ry. Co.* v. *United States*, 284 U. S. 80, at 110.

B. The statute, the findings and the evidence support the Commission's order fixing minimum wharf demurrage and storage charges.

In general, wharf demurrage and storage charges are made for the storage facilities and services rendered by the terminals when goods are left beyond the free time period (R. I, 26, 148–151; Ex. 60, R. I, 793). There is in theory a functional difference between demurrage and storage charges in that the former is ordinarily a penalty charge designed to clear transit space by forcing the cargo off the dock, or, where terminal facilities permit, into wharf storage on a period basis (R. I, 26, 150–151, 244, 252–253, 709; Ex. 61, R. II, 918).[32] However, the evidence here showed, and the Commission found that, as a result of competitive stress, wharf demurrage rates had been so reduced that it was difficult to distinguish between wharf demurrage and storage (R. I, 29, 523; Ex. 60, R. I, 793–794).[33] In fact, the evidence showed that at

[32] Cf. *Penna. R. R. Co.* v. *Kittanning Co.*, 253 U. S. 319, 323.

[33] While appellant California does have in effect a schedule of true penalty demurrage rates, it also provides a lower "bulkhead" storage rate at its steamship assigned facilities;

Stockton and Oakland the wharf demurrage rates were lower than public warehouse storage rates (R. I, 292, 528).

The Commission's determination of the existence of unduly preferential and unreasonable practices in connection with these charges was based on its findings that they did not compensate the terminals for the services rendered (R. I, 40), and thus gave rise to the same basic evils as the excessive free time allowances. In the Commission's language (R. I, 26), "the question here is whether respondents are unduly discriminating between such cargo" left beyond the free time period "and that removed during the free time period. The principal evidence on this point is an analysis of the cost of providing wharf storage to determine whether that class of service is self-sustaining or is furnished at rates so low as to cast a burden upon other services."

The Commission stated that as a result of "aggressive and destructive competition * * * the rates have been so reduced and * * * practices so liberalized" that there was hardly any remaining distinction between "demurrage services and warehouse storage services" (R. I, 28, 29). It found further that the evidence as to the cost of these services showed that the going rates produced revenues "far below the cost of

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and its rate structure at piers 45 and 56 (assigned to Golden Gate and State) is on the same level as that of its competitors. See pp. 10, 13, *supra*.

the service," with the consequence that "users of wharf storage are not providing their proper share of essential terminal revenues," while a disproportionate share of this burden was imposed upon users of other services, for which the terminals had adopted a scale of rates previously found to be reasonable by the California Railroad Commission (R. I, 29, 32, 18).[34] The conclusion that these conditions resulted in violations of the Act was stated as follows (R. 33, 35):

> The next question is whether granting storage at noncompensatory rates is unduly preferential and prejudicial in violation of section 16 of the Shipping Act, 1916, and an unreasonable practice in violation of section 17 thereof. The storage cases previously mentioned * * * established two propositions. First, the furnishing of free storage facilities beyond a reasonable period results in substantial inequality of service as between shippers. Clearly, the furnishing of such facilities at noncompensatory rates is merely a less serious form of the same offense. Second, any preferred treatment by charges or otherwise of certain classes of cargo results in discrimination against other cargo. * * *
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> Oakland contends that there can be no discrimination since the rates are open to

[34] See p. 64, *infra*.

> all shippers alike. In a sense this is true. However, the commercial practices of those shippers who supply the major portion of tonnage handled by respondents obviously do not permit of their placing their goods in storage. Furthermore, it should not be overlooked that the practice of furnishing one service below cost has the tendency to prevent any downward revisions of rates for other services however justified they may be. Clearly, such a practice is unreasonable.

The Commission accordingly prescribed "as a reasonable regulation" (R. I, 40) a schedule of minimum charges for demurrage and storage services, developed in relation to the lowest handling and floor space costs disclosed by unit cost studies which covered the principal private terminals in the area and the Port of Stockton, a public terminal. Admitting that even this minimum was "too low," the Commission nevertheless concluded that it should be adopted because it would "(1) * * * bring about uniformity on a minimum basis * * * not in excess of the cost of the service to any of the respondents, (2) * * * remove many of the abuses disclosed by the record, and (3) * * * provide a standard from which departures can be made on individual commodities as they appear to be justified by further proof" (R. I, 36, 38).

(1) THE TERMINALS' PRACTICES AS TO WHARF DEMURRAGE AND STORAGE CHARGES CONSTITUTE "REGULATIONS AND PRACTICES" WITHIN THE MEANING OF SECTION 17 OF THE ACT

Appellants' first challenge to the wharf demurrage and storage phase of the Commission's order is on the ground that storage charges do not constitute "regulations and practices relating to or connected with the receiving, handling, *storing* * * * of property" [emphasis supplied] within the meaning of the second paragraph of Section 17 of the Act. They argue, in substance, that this conclusion must follow because rates are expressly mentioned in other provisions of the Act dealing with common carriers by water—namely, in the first paragraph of Section 17, in Section 18 and in Section 19—but not in the second paragraph of Section 17, which confers jurisdiction over the "regulations and practices" of "other person(s) subject to this Act." But this argument runs counter to the normal broad meaning of the generic term "regulations and practices," to the legislative history of the Act, to prior decisions of this Court, and furthermore would lead to an incongruous result.

The normal meaning of the terms.—The words "regulations and practices" are fundamentally words of broad meaning; their normal meaning would include all the steps, customs and requirements pursued or imposed in dealing with the matters which they concern, in this case the receipt, handling, storage and delivery of goods.

Normally included within their broad compass would be various specific matters such as free time, rates, special charges for handling, conditions dealing with the safety of the goods such as fire protection, proper crating, inspection, protection against moisture, and the like. One cannot readily think of a more prominent and interesting "practice" in connection with storing property than the practice of charging a fee in return for the privilege of occupying space with goods. It is difficult to believe that Congress could have overlooked the fact that storage rates are indubitably "practices." To accept appellants' view would be to assert that Congress intended such violence to normal meaning to rest upon inference.[35] We shall show that Congress cannot properly be accused of such bad draftsmanship.

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[35] The inferences on which appellants rest are shaky. They infer that because the power to fix rates is specifically conferred in connection with transportation by Sections 18 and 19, such power in connection with "other persons" cannot be found in the authority to regulate "practices." If carried to its logical conclusion this argument, which is a sort of *expressio unius* argument, would mean that no power was conferred to fix the minimum rates of carriers because Section 18 is specific only as to the power to fix maximum rates. And, indeed, appellants so argue (Br. California 94; Br. Oakland 66). It is clear, however, that the power to prevent discriminatory rates (Secs. 16, 17, and 18) necessarily involves the power to fix minimum rates in cases, such as those of inordinately low "missionary rates" (see *Minn. & St. L. R. Co.* v. *Minnesota*, 186 U. S. 257, 267; *Southern Pacific Co.* v. *I. C. C.*, 219 U. S. 433, 439), where the discrimination can most effectively be cured by fixing minimum rates. The

The legislative history.—The legislative history contains a clear indication that the framers of the statute had no such limited notion of the meaning of the phrase in question as appellants suggest but on the contrary contemplated that it would subject the reasonableness of rate-making policies of "other person(s) subject to this Act" to the Commission's scrutiny. The pertinent episode is a discussion which occurred in the course of the Senate Committee hearings on the legislation,[36] and related to the original definition of "other person subject to this act." H. R. 15455, 64th Cong., 1st sess., which became the Shipping Act of 1916 (39 Stat. 728), originally provided a

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instant case is another such example. The 1938 amendment to the Intercoastal Shipping Act (52 Stat. 964. 46 U. S. C. 845a) expressly authorizing the establishment of "just and reasonable maximum or minimum, or maximum and minimum rate(s)" for water carriers in interstate commerce except on the Great Lakes, adds nothing to appellants' inference since it could not do so without also denying the preexisting power to fix maximum rates, a power specifically conferred and on the existence of which the entire inference rests. This amendment did indeed confer new power to fix rates, in two respects not helpful to appellants: To fix minimum rates even where existing ones are not discriminatory, and thus to prevent rate wars more effectively than could be done under a power to fix minimum rates only where necessary to prevent discrimination (cf. *Swayne & Hoyt, Ltd.*, v. *United States*, *supra*, at p. 304).

[36] This material is an appropriate source from which to ascertain the Congressional purpose. *United States* v. *Amer. Trucking Ass'ns*, 310 U. S. 534, 538, 547; *Securities & Exchange Comm.* v. *Robert Collier & Co.*, 76 F. (2d) 939 (C. C. A. 2).

somewhat broader definition of the term than that ultimately adopted, as follows (the difference consisting in the italicized words which were stricken before passage):

> The term "other person subject to this act" means any person not included in the term "common carrier by water," carrying on the business of forwarding, *ferrying, towing* or furnishing *transfer, lighterage,* wharfage, dock or other terminal facilities, *in or* in connection with a common carrier by water.

The discussion in question was occasioned by the appearance of witnesses representing towage and lighterage interests, who sought exemption from the bill and accordingly proposed the elimination of the italicized language from the foregoing definition of "other person subject to this Act."[37] See Hearings before the Subcommittee of the Committee on Commerce, United States Senate, 64th Cong., 1st sess., on H. R. 15455, pp. 132–133. The testimony presented in support of the proposal, devoted largely toward demonstrating the impracticability of attempting any regulation of the towage and lighterage industry, provoked the following instructive colloquy (*id.* at p. 141):

> The CHAIRMAN. You are, in a sense, a public-utility service. I do not see that you have assigned any reason why the Government should not regulate your public-serv-

[37] The proposal was ultimately adopted. See 39 Stat. 728.

ice charges as it regulates other public-service charges, except the suggestion that it might be very difficult for the board to fix and establish just rates.

Mr. MORAN. It is. The conditions are so varied.

Senator FLETCHER. The bill does not contemplate the board undertaking to do that, in the first instance. It contemplates that you people shall yourselves agree *upon regulations and practices that would be uniform and reasonable,* and then afterwards if the board should find that they are not reasonable but that they are unreasonable—whenever the board finds that *any such regulation or practice* as you establish is *unjust or unreasonable*—it then may determine and *prescribe and order enforced a just and reasonable regulation or practice.* [Emphasis supplied.]

This is inconsistent with appellants' thesis that Section 17 leaves the Commission powerless to deal with any matters involving the rate-making policies of "other person(s) subject to this art," particularly since the precise expression employed by Senator Fletcher removes any doubt that he had that very provision [38] in mind.

Prior decisions of this Court.—In addition, appellants' argument that the phrase "regulations and practices" does not extend to any rate-making activities is inconsistent with prior decisions of

[38] H. R. 15455, 64th Cong., 1st Sess., sec. 18.

this Court dealing with similar terminology in the Interstate Commerce Acts. See *B. & O. R. Co.* v. *United States*, 305 U. S. 507, 513, 522, 524; *Adams* v. *Mills*, 286 U. S. 397, 409, 416. In particular, the Commission's treatment of the maintenance of noncompensatory rates as an "unreasonable regulation and practice" is amply supported by the *B. & O.* decision, *supra*. That case arose out of an Interstate Commerce Commission investigation in which it was found that various "warehouse services were performed 'at rates and charges which fail to compensate' the carriers for the cost." 305 U. S. at 514, 518. The Commission determined that among other provisions Section 3 (1) of the Interstate Commerce Act, a provision substantially identical to subdivision First of Section 16 of the Shipping Act, was violated by the practice of selling storage space at less than cost since not all shippers were in a position to avail themselves of the services, and ordered the cessation of the practice. This Court upheld the order, saying (305 U. S. at p. 524):

> Since the carrier warehouse rates, as found by the Court and Commission, are not open to all shippers alike, there is violation of §§ 2 and 3 (1) prohibiting discrimination and unreasonable prejudice. The rail transportation rates have charged against them the loss occasionad by warehousing practices designed to attract a volume of rail business.

Furthermore, in upholding the order against the carriers' contention that it was invalid because the Commission had only considered the cost of the services involved, without making any findings as to whether their market value exceeded the charges made therefor, this Court said, *inter alia* (305 U. S. at p. 524):

> Where competitive *practices* such as existed here are absent, reasonable or market value charges may well be the test. The power, however, is in the Commission, whenever it is of the opinion that *any practice* is unjust, unreasonable, preferential or otherwise violative of the Act, to prescribe what *practice* will be just, fair and reasonable. [Emphasis supplied.]

The supporting citation was to Section 15 (1) of the Interstate Commerce Act (49 U. S. C. 15 (1)) and the context makes it clear that the precise reference was to the following language in that provision:

> Whenever * * * the commission shall be of opinion that any * * * regulation, or practice whatsoever of * * * carriers subject to the provisions of this Act, is or will be unjust or unreasonable or unjustly discriminatory or unduly preferential or prejudicial, or otherwise in violation of any of the provisions of this Act, the commission is authorized and empowered to determine and prescribe what * * * regulation, or practice is or will be just,

fair, and reasonable, to be thereafter followed * * *.

It is evident, then, that this Court construed the power to "prescribe what * * * regulation, or practice is or will be just, fair, and reasonable" as encompassing the prescription of storage rates ample to return cost. It is fair, therefore, to conclude that the comparable language in Section 17 of the Shipping Act similarly authorizes the Maritime Commission to prescribe storage rates which will return cost.[39]

The quoted language in the *B. & O.* opinion is peculiarly significant here, for Section 15 (1), dealing with prohibited "practices", was applied notwithstanding express language in the very same section conferring control over "any * * * rate, fare, or charge whatsoever * * * charged, or collected by any common carrier * * * subject to this Act," and expressly authorizing the establishment of minimum rates as a curative. This refutes appellants' argument for a restricted construction of the term "practices" here—according to which the express reference to rates in Section 15 (1) should have made it clear that

[39] This Court has heretofore drawn attention to the close parallel between the Shipping Act and the Interstate Commerce Act and has said: "* * * we cannot escape the conclusion that Congress intended that the two acts, each in its own field, should have like interpretation, application and effect." *United States Nav. Co.* v. *Cunard S. S. Co.*, 284 U. S. 474, 481.

"practice" did not cover anything pertaining to rates. The Court refused to draw the inference appellants would have it draw here, i. e., that express reference in one section to the power to fix rates shows a Congressional purpose to exclude rate-making practices from the "practices" which are elsewhere placed within administrative regulatory competence.

Finally, the point would seem to be foreclosed by this Court's decision in *Swayne & Hoyt, Ltd.* v. *United States,* 300 U. S. 297, 303, holding that the first prohibition in Section 16 (Appendix, *infra,* p. 81), against giving undue advantages or preferences, prohibits the charging of discriminatory rates. The prohibitions in Section 16 are operative against "other person(s) subject to this Act" as well as carriers, so the charging of discriminatory rates by "other persons" is also prohibited. And it seems clear that both the second paragraph of Section 17 and Section 18 were designed to implement the prohibitions of Section 16 by giving the Commission power to eliminate by regulation the prohibited evils; thus the conclusion seems compelled by the *Swayne & Hoyt* case that under Section 17 the Commission has power to prevent "other persons" charging discriminatory rates. This power, of course, can be most effectively exercised by designating what

rates the Commission will deem nondiscriminatory.

Appellants' construction deprives the Act of a sensible structure.—Another vice in appellants' argument denying the Commission's power to fix non-discriminatory storage rates is that it would limit the Commission's power of enforcement of Section 16 in connection with storage rates to the utilization of the criminal sanctions in that section. Section 29 of the Act (46 U. S. C. 828) provides for the civil enforcement of Commission orders and it is not to be supposed that Congress intended to preclude utilization of this remedy in the case of storage rates only, by denying the regulatory and enforcement agency the power to issue orders enforcing Section 16 in such cases.[49] It is reasonable to conclude that Congress intended to empower the Commission to deal with discriminations resulting from non-compensatory storage rates as it could with other violations—by regulatory order. Such a conclusion is, as we pointed out, *supra*, p. 50, in accord with the normal meaning of the language of Section 17, empowering the Commission to "order enforced a just and reasonable regulation or practice," "relating to or connected

[49] In *Swayne & Hoyt, Ltd.* v. *United States*, *supra*, an order enforcing the prohibitions of Section 16 in the case of transportation rates was upheld.

with the receiving, handling, storing, or delivering of property."

This case illustrates that appellants' view would deprive the Act of a sensible and effective structure. No one denies that "free time" is a "practice" which in a proper case the Commission may regulate (Cf. R. I, 89). But, as the Commission clearly saw (R. I, 33–34), free time is not a practice separate and apart from storage and demurrage rates and cannot be dealt with separately. Actual experience proves this to be so. In *Storage Charges under Agreements 6205 and 6215,* 2 U. S. M. C. 48 (1939), terminals were found to be defeating the free time regulations previously imposed by the Commission in *Storage of Import Property,* 1 U. S. M. C. 676 (1937), by assessing nominal storage charges after the free time expired. In order that the free time regulations could be made effective the storage charges had to be regulated as well.[41] Similarly here, if the Commission could regulate practices as to free time but not practices as to storage and demurrage charges, any regulation restricting the generosity of the terminals' free time allowances could be easily counteracted by reduced or nominal storage charges after the free time ended.

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[41] The order regulating the storage charges was upheld in *Booth S. S. Co. et al* v. *United States,* 29 F. Supp. 221 (S. D. N. Y.).

Here the Commission is seeking to combat evils inherent in the terminals' over-generous storage practices. The evil could not be effectively dealt with without controlling storage and demurrage charges as well as free time. It only confuses the real issue to focus exclusively on the form the Commission's order necessarily took, to disregard its functional character, and to protest its validity on the ground of the absence of any specific authority in the statute to establish a minimum level or rates. For in providing Section 17 as an instrumentality for accomplishing the policies of the Act, Congress did not undertake to "define the whole gamut of remedies to effectuate these policies in an infinite variety of specific situations" which might call for correction, but left the "adaptation of means to end to the empiric process of administration." *Cf. Phelps Dodge Corp.* v. *Labor Board,* 313 U. S. 177, 194. In the proper focus, the real test of the propriety of the order is simply whether it is "arbitrary or capricious," or to put the question another way, whether it is reasonably "adapted to the situation which calls for redress" (*cf. Labor Board* v. *Mackay Co.,* 304 U. S. 333, 348). See *e. g., O'Keefe* v. *United States,* 240 U. S. 294, 303–304; *Houston* v. *St. Louis Packing Co.,* 249 U. S. 479, 483, 487; *American Telephone and Telegraph Co.* v. *United States,* 299 U. S. 232, 236–237, 243; *Pacific States Co.* v. *White,* 296 U. S. 176, 182.

So tested, there can be little doubt of the propriety of the order. It strikes directly at the root of the evil by prescribing a level of charges more nearly approximating the costs of the services furnished, but not "in excess of the cost of the services to any" of the terminals (R. I, 38).[42] In essence, the order is no different from that involved in *B. & O. R. Co.* v. *United States, supra,* ordering the carriers to refrain from furnishing the warehouse services there in question at less than cost. And, indeed, the Commission's order here would seem preferable by virtue of its specificity, both from the standpoint of enforcement by the Commission and compliance by the terminals. *Cf. American Telephone and Telegraph Co.* v. *United States,* 299 U. S. 232, 246–247; *Georgia Comm.* v. *United States,* 283 U. S. 765, 771–774; Stone, J., dissenting in *Chicago, R. I. & P. Ry. Co.* v. *United States,* 284 U. S. 80, 116.

(2) THE COMMISSION'S ORDER WAS FULLY SUSTAINED BY ITS FINDINGS AND THE EVIDENCE REGARDING DISCRIMINATION

The Commission's condemnation of the practice of furnishing wharf demurrage and storage service below cost was based on the findings that it cast an undue share of the burden of providing terminal revenues on users of other services and

[42] There is no merit in the suggestion that the inclusion in the Commission's schedule of the 5¢ "penalty" rate for the first five days demonstrates that the schedule of charges fixed by the Commission is more than compensatory to the

tended to prevent reductions in the charges for such other services "however justified"; and that the practice operated to prefer those shippers able to avail themselves of the storage services over other shippers, supplying the major part of the traffic, whose "commercial practices * * * obviously do not permit of their placing these goods in storage" (R. I, 35). That these findings amply sustain the Commission's ultimate conclusion is clear from prior decisions of this Court.

In condemning the practice in question because it cast an undue burden on users of other services and tended to prevent reductions which might otherwise be made in the charges therefor, the Commission merely restated a proposition long ago declared by this Court in *East Tenn., &c. Ry. v. Interstate Commerce Commission*, 181 U. S. 1, 19–20, as follows:

> That, as indicated in the previous opinions of this court, there may be cases where the carrier cannot be allowed to avail of the competitive condition because of the public interests and the other provisions of the statute, is of course clear. What particular environment may in every case pro-

terminals (Br. California 121–122; Br. Oakland 90–91). Even if it were proper to consider that item by itself, apart from the balance of the Schedule, the fact is as Mr. Differding expressly testified, that the so-called "penalty demurrage" rate of 5 cents per day is generally insufficient to cover the terminals' costs on "penalty cargo" (R. I. 712–713).

> duce this result cannot be in advance indicated. But the suggestion of an obvious case is not inappropriate. Take a case where the carrier cannot meet the competitive rate to a given point without transporting the merchandise at less than the cost of transportation, and therefore without bringing about a deficiency, which would have to be met by increased charges upon other business. Clearly, in such a case, the engaging in such competitive traffic would both bring about an unjust discrimination and a disregard of the public interest, since a tendency towards unreasonable rates on other business would arise from the carriage of traffic at less than the cost of transportation to particular places. * * *

See also *Intermountain Rate Cases*, 234 U. S. 476, 483.

There is no escaping the force of this proposition in the circumstances revealed by the evidence here. The terminals offer a number of other services, besides wharf demurrage and storage, for which they made independent charges of both the shippers and the vessels (R. I, 141–142; Ex. 61, R. II, 878–908). In particular, the record shows that the terminals concerned, including appellants, raised their "toll" charges against cargo [43] by 10 cents per ton in December 1939, shortly before the

[43] "Toll charges are assessed against cargo for the privilege of transportation over or through terminal, or being loaded or discharged at terminal" (R. 18, n. 2).

institution of the instant proceedings, because "they found they needed more money" (R. I, 263, 473–474, 716). This increase practically doubled the previous average toll revenues of approximately 11 cents per ton and effected the recommendation originally made by the California Railroad Commission at the time of its investigation in 1935–1936 (Ex. 61, R. II, 889, 891–894). Furthermore, as noted in the Commission's report (R. I, 32–33), in the case of the two major private terminals unit cost studies of record for the year 1939 establish that deficits "from all operations * * * would have been wiped out and net profit shown * * * if they had charged only the actual cost of furnishing the [storage] service in 1939 as developed by the formula" (R. II, 1244, 1309)." Manifestly, then, the record disclosed the kind of situation in which the practice of charging noncompensatory rates was denounced in the *East Tenn. &c. Ry.* case, *supra,* and accordingly furnished ample evidentiary support for the Commission's similar condemnation of the practice here.

Insofar as the Commission found an unlawful preference in the availability of the below-cost services to some shippers and not to others, its determination is fully sustained by *B. & O. R. Co.* v. *United States,* 305 U. S. 507 (see pp. 54–57,

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" For the other services generally furnished by the terminals, see Ex. 61, R. II, 878–908; Ex. 60, R. I, 798–800.

supra), where the issue concerned the validity of an analogous Interstate Commission determination that the furnishing of warehouse services at less than cost by common carriers violated the provisions of the Interstate Commerce Act outlawing rebates and discrimination. In upholding the Commission, this Court said (305 U. S. at 507, 524, 525):

> * * * Since the carrier warehouse rates, as found by the Court and Commission, are not open to all shippers alike, there is violation of §§ 2 and 3 (1) prohibiting discrimination and unreasonable prejudice. The rail transportation rates have charged them the loss occasioned by warehousing practices designed to attract a volume of rail business.
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> * * * * *
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> * * * If the service is non-transportation, the fact that it is in a tariff does not save it from the condemnation of § 6 (7). That section forbids receiving a less compensation for transportation than the tariff. The loss on in-transit warehousing, entered into to secure the rail-haul, results in lowered receipts for the transportation and in violation of the section. Some shippers are not in a position to avail themselves of the below-cost in-transit service. They must pay the full transportation rate, without any offset from the warehousing. This discrimination between shippers is

> unlawful and the remedy applied by the order valid in these circumstances.

See also *United States* v. *Trucking Co.*, 310 U. S. 344, 351, 353–354.

A parallel situation obtains here. The rates for the other services rendered by the terminals (see p. 5 *supra*) "have charged against them" (R. 35) the loss from the noncompensatory storage charges caused by the terminals' bitter competition for traffic (R. I, 28, 710, 716–717). Shippers supplying the bulk of the terminals' traffic, as found by the Commission (R. I, 35), are not in a position to avail themselves of the below-cost storage services. Yet, such shippers are subject to the terminals' "toll" charges (see p. 5 *supra*), which they must pay in full without any offset from the warehousing. Likewise a burden is cast on the vessels which must pay "dockage" and various other service charges. (See R. 716–717.)

Appellants argue that the *B. & O.* case is distinguishable, that nothing in the record at bar shows that "some shippers are not in a position to avail themselves" of the below-cost storage services. However, there is no merit in this contention. For the Commission's chief witness expressly testified that the burden of the noncompensatory storage charges was cast "upon the other users of the facilities, *which in this case means*

the vessels and those shippers who have transit cargo and do not take advantage of the wharf demurrage space" (R. I, 717).[45] And this testimony is corroborated by evidence revealing that the amount of the cargo stored at the terminals represents only a small fraction of the total cargo handled.[46] Indeed, that fact alone would establish that most shippers are not practicably in a position to utilize the storage services. Cf. *O'Keefe* v. *United States*, 240 U. S. 294, 303; *Swayne & Hoyt Ltd.* v. *United States*, 300 U. S. 297, 305–307.[47]

[45] Emphasis supplied.

[46] The actual figures shown by the record are as follows:

	Total tons general cargo handled 12 months	Total tons general cargo stored 12 months	Percentage of tons cargo stored to tons cargo handled
Howard	386,439 [1]	29,429 (Ex. 130, R. II, 1283)	7.62
Encinal	560,760 [1]	33,006 (Ex. 140, R. II, 1300)	5.89
Stockton	395,158 [1]	6,175 (Ex. 137, R. II, 1291)	1.56
Oakland	595,029 [1]	18,285 [2] (Ex. 167, R. II, 1308)	3.07
San Francisco (piers 45 and 56).	223,117 (Ex. 135, R. II, 1276A).	5,674 [2] (Exs. 135, 135a, b, c, R. II, 1278A, 1280A).	2.54

[1] These figures, which appear in the Commission's Report (R. I, 28), were taken from Exhibits 171, 170, 138, 162, respectively, omitted in printing.

[2] Based on average balance of tons on storage at end of each 12 months.

[47] The reference to the fact that no shippers complained of the practices condemned by the Commission is pointless. "The fact that the Commission acted on its own motion without complaint by individual shippers did not detract from the Commission's power to protect and maintain a transportation system free of partiality to particular shippers." *United States* v. *Trucking Co.*, 310 U. S. 344, 353–354.

It is, of course, immaterial that the practices in question may have been resorted to without any motive or purpose to discriminate, but solely in order to meet competition; or in the case of the public terminals, to foster municipal development. Cf. *New Haven R. R.* v. *Interstate Com. Comm.*, 200 U. S. 361, 398; *Intermountain Rate Cases*, 234 U. S. 476, 483; *United States* v. *Illinois Cent. R. R.*, 263 U. S. 515, 524–525; *Union Pacific R. Co.* v. *United States*, 313 U. S. 450, 462–463, 464–468.

(3) THE EVIDENCE SUPPORTS THE COMMISSION'S FINDING THAT APPELLANTS' STORAGE AND DEMURRAGE CHARGES WERE NONCOMPENSATORY

The next ground upon which appellants object to the Commission's order as to wharf demurrage and storage charges is narrower in scope, disputing its validity only in so far as it is directed to appellants. This consists in the contention that in their particular cases the Commission's finding that the charges in question were noncompensatory is not supported by the evidence. The Court below considered this contention and held that the finding was supported by evidence (R. I, 91–92).

Conceding, in effect, that its charges are noncompensatory if floor space costs [48] are taken into

[48] This refers to cost of physical plant used for storage, principally transit sheds, and includes the annual charge for maintenance, depreciation, return and taxes (Ex. 61, R. II, 907).

account, Oakland contends that the Commission erred in including such costs in its determinations, instead of confining itself to "out-of-pocket" costs. The theory of this argument is that if the storage charges meet the "out-of-pocket" expenses incurred in rendering the service, they cannot be deemed to cast a burden on the charges for other services (Br. Oakland 77–78).[49] And, by reference to the table of average revenues and costs shown for the East Bay terminals[50] in the appendix to the Commission's report, Oakland seeks to establish that its storage charges do cover its "out-of-pocket" expenses.

Appellant California's argument in this connection is that the record does not show that its charges are substantially noncompensatory or do not return out-of-pocket costs (Br. California 122).

However, there is no merit in these contentions,

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[49] This argument emphasizes the discrimination which resulted from the old demurrage rates. The argument would free one class of user from any charge for the physical plant, which obviously must be paid for somehow, and would cast the entire burden on other users. The Commission's rejection of this argument is not unreasonable. Cf. *Nor. Pac. Ry. Co.* v. *North Dakota*, 236 U. S. 585, 596–598. As the court below held (R. I, 92), the determination of the proper cost basis was a question of fact for the Commission to decide (*Swayne & Hoyt Ltd.* v. *United States*, *supra*, at p. 304; cf. *Groesbeck* v. *Duluth, S. S. & A. Ry. Co.*, 250 U. S. 607, 615).

[50] This includes all of the wharves affected by the Commission's order except those owned by California (Ex. 60, R. I, 779).

for although appellants here, urging the inappropriateness of their accounting methods, failed to supply the unit costs of their demurrage and storage services under the Edwards-Differding formula, the record fully supports the Commission's finding that the general data submitted instead "when considered with the cost developed by Howard, Encinal and Stockton, indicate[s] that their [appellants'] rates are far from compensatory" (R. I, 31).

It will be helpful at this point to recall the background and basis of the cost data developed for Encinal, Howard, and Stockton, for the year 1939 in the case of the first two, and 1940 for the latter, the latest figures available at the time of the Commission's hearing. The groundwork for this data was the original Edwards-Differding study for the California Railroad Commission of the over-all costs and revenues of the principal private terminals in the area, based primarily on their 1935 operations. (R. II, 873–967; I, 243–244.) As shown in the Statement, *supra*, pp. 9–15, this study was exhaustive, except with respect to Oakland and California, over which the Railroad Commission had no jurisdiction. A cost formula was developed from this study and the rates recommended by the Railroad Commission in 1935 were based on this formula.

This cost formula furnished the model for the formula used to develop the aforementioned data

regarding 1939 and 1940 costs at Encinal, Howard and Stockton, for purposes of the proceeding at bar (R. I, 29–32; Ex. 62, R. II, 967). The costs thus developed, taken in conjunction with revenues, revealed that all three terminals were operating their wharf demurrage and storage services at a substantial loss (see Statement, *supra*, p. 16).

In the light of such evidence, the untenability of Oakland's argument, even on the assumption that only "out-of-pocket" costs could be considered, becomes immediately apparent. Nothing in the record suports its argument that its storage or demurrage charges cover out-of-pocket costs,[51] and the foregoing data strongly suggests that the contrary is true. Thus the record shows that the average monthly storage or demurrage revenue on all commodities at Oakland for 1939 was only 24.5¢ (Statement, *supra*, p. 16). Not only does this fall short of the lowest average revenue shown for any of the terminals studied, but, as the Commission pointed out, it falls considerably short of Encinal's average "fixed" unit cost per ton of 33.6¢, the lowest shown by the studies for normal piling (R. I, 30). This latter figure being exclusive of

[51] On the contrary, Mr. Differding testified that even when measured against out-of-pocket costs the demurrage and storage charges were not "carrying [their] way" in relation to the terminals' charges for their other services and were thus burdening users of other services (R. I, 716–717).

high-piling, overhead[52] and floor space cost, it would presumably correspond to what Oakland has in mind as "out-of-pocket" costs.

Moreover, the contrast between Oakland's average revenue of 24.5¢ per ton and the corresponding figures for Encinal, Howard and Stockton, 31.2¢, 42.6¢ and 64.5¢, respectively (R. I, 30), conclusively demonstrates the fallacy of Oakland's assertion that its existing rates return it more than out-of-pocket costs[53] (Br. Oakland 91–94). The attempt to prove this assertion is made upon the basis of figures drawn from the comparative statement of revenues and costs shown, on a composite basis, for East Bay terminals in the Appendix to the Commission's Report (Br. Oakland 91–94). But in view of the fact that Oakland shows an average revenue far below those of the other East Bay terminals, it can hardly assume, as its argument necessarily does, that the composite revenues shown in that Appendix are representative of its own.[54] Furthermore, Oakland's argument in this connection involves the highly improbable assumption that it incurs no handling costs whatsoever.

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[52] "Unallocated overhead items" comprise more than 50% of all terminal costs (R. I, 254; Ex. 61, R. II, 926).

[53] Oakland does not challenge the fact that its rates are non-compensatory if other expenses are taken in account.

[54] It is noteworthy also that the data shown for Encinal, Howard and Stockton reveal that in each case average revenues are below costs for normal piling, exclusive of both overhead and floor space costs. Statement, *supra*, p. 16.

It is evident, we submit, that the Commission's finding that Oakland's demurrage charges were non-compensatory is supported by evidence.

The evidence as to the remunerativeness of California's charges was generally less specific than that available in Oakland's case. But the Commission's conclusion that, considered with the detailed cost data shown for Encinal, Howard and Stockton, this evidence indicated that California's charges were non-compensatory, is nonetheless justified.

Certainly as to the charges made by the State at piers 45 and 56, which remain subject to its supervision and control notwithstanding "assignments" to Golden Gate Terminals and State Terminal Company, Ltd., respectively (see pp. 4–5, *supra*), the picture is essentially no different from that shown with respect to Oakland's charges. The charges fixed by the State at piers 45 and 56 parallel those of the East Bay terminals (R. I, 454–455). And the record shows that the average monthly demurrage revenue per ton received on all commodities at these terminals is only 30.9¢ (Statement, *supra*, p. 17), which, as in Oakland's case, fails to equal the lowest "fixed" unit cost per ton (i. e., out-of-pocket cost, which is cost exclusive of high-piling, overhead and floor space costs) found among the terminals for which unit costs were developed.

But aside from the particular facts shown as to piers 45 and 56, the record otherwise supports

the Commission's conclusion that California's charges were non-compensatory. The evidence in question consisted chiefly in a statement showing income, expense and other data of the State's terminal operations at San Francisco in the fiscal years ending June 30, 1939 and 1940 (Ex. 135, R. II, 1258), which was submitted by the State in lieu of the unit cost studies requested by the Commission. This shows an over-all net income, designated as "Surplus to accumulated excess income for replacement of facilities and retirement of bonds," of $215,356.85 for 1940 and $88,363.89 for 1939. If the loss incurred in operating the State's Belt Railroad is eliminated, then the net income shown is $283,942.16 for 1940 and $161,416.89 for 1939. But, as the Commission noted (R. I, 32), these sums reflect no deduction for depreciation. And, the record shows that they are not at all available for "replacement of facilities" for they failed even to pay the sinking fund requirements for retirement of bonds—$345,939.33 in each year (R. I, 583, 585–586)—to which they must first be devoted under state law.

It clearly appears from the record that upon any reasonable basis of reckoning depreciation, appellant California's terminal operations at San Francisco are being conducted at a very heavy annual loss. Thus, the Edwards-Differding study (see pp. 13–15, *supra*) included an analysis of the service lives of the various kinds of terminal property, which showed a maximum estimate of

50 years for buildings and structures, based on the most durable construction, and a maximum of 10 years for dock equipment (Ex. 61, R. II, 945–948). Accordingly, on the straight-line method of depreciation accounting, which appellant California adopted when it last calculated depreciation in 1929 (R. I, 580–581), the minimum annual rate of depreciation would be 2% for buildings and structures, wharves and sheds, and 10% for equipment. Application of these annual rates to the recorded values shown on appellant's balance sheet for these types of properties (see Ex. 135, R. II, 1257), as of June 30, 1939 and 1940, discloses annual depreciation accruals, to be provided from revenues, of $1,135,003 and $1,132,426 for buildings and structures, in 1939 and 1940, respectively, and of $88,780 and $88,686, respectively, for equipment. Adding these figures to the deficiencies for annual redemption of bonds, the amounts by which annual revenues fall short of annual costs incurred in the terminal operations at San Francisco in 1939 and 1940 were $1,405,634 and $1,285,786, respectively.[55]

Thus California's "general data" indicated the utter inadequacy of its over-all terminal revenues to meet costs of operation, and the unit cost studies revealed that demurrage and storage charges were far below cost in the case of each terminal for which such studies were available.

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[55] All of the foregoing figures are exclusive of the investment in the Belt Railroad operated in connection with the terminal properties.

Accordingly, in the case of California as well as that of Oakland, the Commission was clearly entitled to infer from the evidence that the demurrage charges were non-compensatory (cf. *O'Keefe* v. *United States*, 240 U. S. 294, 303; *Swayne & Hoyt, Ltd.* v. *United States*, 300 U. S. 297, 305–307).[36] Moreover, the failure of both to come forward with any evidence that the charges were compensatory, after the Commission's urgent concern with the sufficiency of existing charges to meet costs had been plainly shown both by the Commission's direct evidence and the statements of Commission counsel at the hearing (R. 582, 604), likewise tends to support the Commission's conclusion. Cf. *Interstate Circuit* v. *United States*, 306 U. S. 208, 226; *Mammoth Oil Co.* v. *United States*, 275 U. S. 13, 51–53. As substantial evidence supports them, the findings should be upheld. *Swayne & Hoyt, Ltd.* v. *United States, supra*, at pp. 304, 307.

IV

OAKLAND'S LEASES WITH HOWARD AND THE McCORMICK STEAMSHIP COMPANY WERE PROPERLY HELD SUBJECT TO SECTION 15 OF THE ACT

Without arguing that its leases to Howard and the McCormick Steamship Company are exempt

[36] The adequacy of the cost studies is a question of fact for the Commission, in the decision of which evidence of the costs of each terminal operator affected is not necessary. See *Illinois Commerce Commission* v. *United States*, 292 U. S. 474, 480–481, 484.

from Section 15 of the Act,[57] Oakland suggests that the Court should not "lightly" hold those leases subject to the Commission's approval, because of possible conflict between local and federal requirements (Br. Oakland 107–109). However, not only has Oakland failed to point out any conflict which has so far materialized because of the Commission's ruling that the leases must be submitted for its approval, but should such conflict ever eventuate, it is clear that the federal regulation must control. *Southern Ry. Co.* v. *Reid*, 222 U. S. 424, 440–442; *Moore* v. *Bay*, 284 U. S. 4.[58]

CONCLUSION

For the foregoing reasons, the judgments should be affirmed.

Respectfully submitted.

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NOVEMBER 1943.

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[57] The leases in question are clearly covered by Section 15 as the Commission properly ruled (R. I, 19–20).

[58] The fact that the lease with Howard antedates the Act is of course immaterial. *Louisville & Nashville R. R.* v. *Mottley*, 219 U. S. 467, 482; *DeLaval Co.* v. *United States*, 284 U. S. 61, 73, 74.

APPENDIX

The Shipping Act of 1916, as amended (39 Stat. 728, 46 U. S. C. 801 *et seq.*), provides in part as follows:

Section 1 (46 U. S. C. 801):

When used in this Act:

The term "common carrier by water in foreign commerce" means a common carrier, except ferryboats running on regular routes, engaged in the transportation by water of passengers or property between the United States or any of its Districts, Territories, or possessions and a foreign country, whether in the import or export trade: *Provided,* That a cargo boat commonly called an ocean tramp shall not be deemed such "common carrier by water in foreign commerce."

The term "common carrier by water in interstate commerce" means a common carrier engaged in the transportation by water of passengers or property on the high seas or the Great Lakes on regular routes from port to port between one State, Territory, District, or possession of the United States and any other State, Territory, District, or possession of the United States, or between places in the same Territory, District, or possession.

The term "common carrier by water" means a common carrier by water in foreign commerce or a common carrier by water in interstate commerce on the high seas or the Great Lakes on regular routes from port to port.

The term "other person subject to this Act" means any person not included in the term "common carrier by water," carrying on the business of forwarding or furnishing wharfage, dock, warehouse, or other terminal facilities in connection with a common carrier by water.

The term "person" includes corporations, partnerships, and associations, existing under or authorized by the laws of the United States, or any State, Territory, District, or possession thereof, or of any foreign country.

The term "vessel" includes all water craft and other artificial contrivances of whatever description and at whatever stage of construction, whether on the stocks or launched, which are used or are capable of being or are intended to be used as a means of transportation on water.

The term "documented under the laws of the United States," means "registered, enrolled, or licensed under the laws of the United States."

Section 15 (46 U. S. C. 814):

Every common carrier by water, or other person subject to this Act, shall file immediately with the commission a true copy, or, if oral, a true and complete memorandum, of every agreement with another such carrier or other person subject to this Act, or modification or cancellation thereof, to which it may be a party or conform in whole or in part, fixing or regulating transportation rates or fares; giving or receiving special rates, accommodations, or other special privileges or advantages; controlling, regulating, preventing, or destroying competition; pooling or appor-

tioning earnings, losses, or traffic; allotting ports or restricting or otherwise regulating the number and character of sailings between ports; limiting or regulating in any way the volume or character of freight or passenger traffic to be carried; or in any manner providing for an exclusive, preferential, or cooperative working arrangement. The term "agreement" in this section includes understandings, conferences, and other arrangements.

The commission may by order disapprove, cancel, or modify any agreement, or any modification or cancellation thereof, whether or not previously approved by it, that it finds to be unjustly discriminatory or unfair as between carriers, shippers, exporters, importers, or ports, or between exporters from the United States and their foreign competitors, or to operate to the detriment of the commerce of the United States, or to be in violation of this Act, and shall approve all other agreements, modifications, or cancellations.

Agreements existing at the time of the organization of the commission shall be lawful until disapproved by the commission. It shall be unlawful to carry out any agreement or any portion thereof disapproved by the commission.

All agreements, modifications, or cancellations made after the organization of the commission shall be lawful only when and as long as approved by the commission, and before approval or after disapproval it shall be unlawful to carry out in whole or in part, directly or indirectly, any such agreement, modification, or cancellation.

Every agreement, modification, or cancellation lawful under this section shall be excepted from the provisions of the Act approved July second, eighteen hundred and ninety, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," and amendments and Acts supplementary thereto, and the provisions of sections seventy-three to seventy-seven, both inclusive, of the Act approved August twenty-seventh, eighteen hundred and ninety-four, entitled "An Act to reduce taxation, to provide revenue for the Government, and for other purposes," and amendments and Acts supplementary thereto.

Whoever violates any provision of this section shall be liable to a penalty of $1,000 for each day such violation continues, to be recovered by the United States in a civil action.

Section 16 (46 U. S. C. 815):

It shall be unlawful for any shipper, consignor, consignee, forwarder, broker, or other person, or any officer, agent, or employee thereof, knowingly and willfully, directly or indirectly, by means of false billing, false classification, false weighing, false report of weight, or by any other unjust or unfair device or means to obtain or attempt to obtain transportation by water for property at less than the rates or charges which would otherwise be applicable.

That it shall be unlawful for any common carrier by water, or other person subject to this Act, either alone or in conjunction with any other person, directly or indirectly—

First. To make or give any undue or unreasonable preference or advantage to

any particular person, locality, or description of traffic in any respect whatsoever, or to subject any particular person, locality, or description of traffic to any undue or unreasonable prejudice or disadvantage in any respect whatsoever.

Second. To allow any person to obtain transportation for property at less than the regular rates or charges then established and enforced on the line of such carrier by means of false billing, false classification, false weighing, false report of weight, or by any other unjust or unfair device or means.

Third. To induce, persuade, or otherwise influence any marine insurance company or underwriter, or agent thereof, not to give a competing carrier by water as favorable a rate of insurance on vessel or cargo, having due regard to the class of vessel or cargo, as is granted to such carrier or other person subject to this Act.

Whoever violates any provision of this section shall be guilty of a misdemeanor punishable by a fine of not more than $5,000 for each offense.

Section 17 (46 U. S. C. 816):

no common carrier by water in foreign commerce shall demand, charge, or collect any rate, fare, or charge which is unjustly discriminatory between shippers or ports, or unjustly prejudicial to exporters of the United States as compared with their foreign competitors. Whenever the commission finds that any such rate, fare, or charge is demanded, charged, or collected it may alter the same to the extent necessary to correct such unjust discrimination or prejudice and make an order that the carrier shall discontinue demanding, charging, or

collecting any such unjustly discriminatory or prejudicial rate, fare, or charge.

Every such carrier and every other person subject to this Act shall establish, observe, and enforce just and reasonable regulations and practices relating to or connected with the receiving, handling, storing, or delivering of property. Whenever the commission finds that any such regulation or practice is unjust or unreasonable it may determine, prescribe, and order enforced a just and reasonable regulation or practice.

Section 18 (46 U. S. C. 817):

every common carrier by water in interstate commerce shall establish, observe, and enforce just and reasonable rates, fares, charges, classifications, and tariffs, and just and reasonable regulations and practices relating thereto and to the issuance, form, and substance of tickets, receipts, and bills of lading, the manner and method of presenting, marking, packing, and delivering property for transportation, the carrying of personal, sample, and excess baggage, the facilities for transportation, and all other matters relating to or connected with the receiving, handling, transporting, storing, or delivering of property.

Every such carrier shall file with the commission and keep open to public inspection, in the form and manner and within the time prescribed by the commission, the maximum rates, fares, and charges for or in connection with transportation between points on its own route; and if a through route has been established, the maximum rates, fares, and charges for or in connection with transportation between points on its own route

and points on the route of any other carrier by water.

No such carrier shall demand, charge, or collect a greater compensation for such transportation than the rates, fares, and charges filed in compliance with this section, except with the approval of the commission and after ten days' public notice in the form and manner prescribed by the commission, stating the increase proposed to be made; but the commission for good cause shown may waive such notice.

Whenever the commission finds that any rate, fare, charge, classification, tariff, regulation, or practice, demanded, charged, collected, or observed by such carrier is unjust or unreasonable, it may determine, prescribe, and order enforced a just and reasonable maximum rate, fare, or charge, or a just and reasonable classification, tariff, regulation, or practice.

Section 29 (46 U. S. C. 828):

in case of violation of any order of the commission, other than an order for the payment of money, the commission, or any party injured by such violation, or the Attorney General, may apply to a district court having jurisdiction of the parties; and if, after hearing, the court determines that the order was regularly made and duly issued, it shall enforce obedience thereto by a writ of injunction or other proper process, mandatory or otherwise.

Section 31 (46 U. S. C. 830):

That the venue and procedure in the courts of the United States in suits brought to enforce, suspend, or set aside, in whole or in

part, any order of the board shall, except as herein otherwise provided, be the same as in similar suits in regard to orders of the Interstate Commerce Commission, but such suits may also be maintained in any district court having jurisdiction of the parties.

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In the Supreme Court
OF THE
United States

OCTOBER TERM, 1943

No. 20

STATE OF CALIFORNIA and BOARD OF STATE HARBOR COMMISSIONERS FOR SAN FRANCISCO HARBOR,

Appellants,

vs.

UNITED STATES OF AMERICA and UNITED STATES MARITIME COMMISSION, ENCINAL TERMINALS, HOWARD TERMINAL, and PARR-RICHMOND TERMINAL CORPORATION,

Appellees.

APPELLANTS' PETITION FOR REHEARING.

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Appellees.

APPELLANTS' PETITION FOR REHEARING.

To the Honorable Harlan Fiske Stone, Chief Justice of the United States, and to the Honorable Associate Justices of the Supreme Court of the United States:

Come now the State of California and the Board of State Harbor Commissioners for San Francisco Har-

bor, appellants above named, and respectfully petition this Honorable Court to grant a rehearing in the above entitled cause, upon the following grounds:

GROUNDS FOR PETITION.

Without touching upon any other questions, or conceding that the judgment appealed from should not have been reversed on other grounds, appellants address themselves to the questions upon which the Court was divided, as shown by the majority and dissenting opinions.

The decision of the Court in this cause turned upon the conclusions reached in the majority opinion as to the power of the United States Maritime Commission, under the Shipping Act, 1916, as amended, to fix rates for wharf demurrage and storage.

The chain of reasoning in the majority opinion may be summarized as follows:

The wharf demurrage and storage rates of appellants were found by the Commission to be furnished below cost; free time on the facilities of defendants was unreasonably long or unreasonably extended, and amounted to a wastage of valuable space without any compensation therefor; both of these conditions cast a burden upon nonusers of excessive free time or wharf demurrage and storage services by shifting the burden of supplying sufficient revenue "to those who paid appellants for other terminal services such as docking of vessels, loading and unloading, and transportation privileges over and through the terminals"; this shifting of burden was a discrimination in viola-

tion of Sections 16 and 17 of the Shipping Act. Having found the discrimination to exist, the Commission was empowered by the Act to make and issue appropriate orders to do away with the discrimination; the fixing of minimum rates for wharf storage and services for the purpose of preventiing such discrimination was legally authorized by Sections 16 and 17 of the Act.

We think the Court fell into error in two respects: first, the record does not disclose any actual discrimination; secondly, if a discrimination did exist, the Commission was not empowered to remove it by prescribing a minimum rate for wharf storage and demurrage.

1.

THERE WAS NO DISCRIMINATION.

The theory of burden-shifting adopted by the Court may be succinctly stated as follows: When a port authority subject to the Act has different sets of rates for different services and when it furnishes one kind of service at rates which will not produce revenues sufficient to pay the cost of that particular service, including carrying charges for the facilities which furnish it, the port authority must impose higher rates for other services than it would otherwise charge, in order that the port authority shall not lose money on the whole enterprise. As a result, a user of such other services who is a nonuser of the noncompensatory service has to pay a higher charge than

he would have to pay if the charges for the last mentioned service were compensatory.

In this case, the theory of burden-shifting is but an empty formula; that is to say, there is no showing in the record that the charging by appellants of the asserted noncompensatory rates of wharf demurrage and storage actually resulted or even had a tendency to result in the imposing of higher rates for other services used by persons who did not use the noncompensatory service.

Under the provisions of Sections 3080 and 3084 of the Harbors and Navigation Code of California, the Board of State Harbor Commissioners of San Francisco Harbor, hereinafter called the "Board" is forbidden to make charges beyond the cost of furnishing facilities and administering them. There is, however, no legal prohibition against making port charges which will not produce revenue sufficient to pay the cost of furnishing such facilities and paying for their administration because neither the Constitution nor the laws of the State of California prevent the legislature of the State from supplementing the revenue of the Board of State Harbor Commissioners by appropriations from State funds other than those produced by port charges.

This being so, appellants in operating the Port of San Francisco are free from the economic necessity which compels ports which are privately owned and operated to make income at least square with outgo.

On account of this difference between the publicly owned and operated harbor of appellants and pri-

vately owned ports, it is at once seen that there is no room for the operation of the theory of shifting the burden, unless it is shown that the loss occasioned by the noncompensatory character of one service is actually made up by the imposition of higher rates for other services. There is no such showing in the record in this case.

The record, as interpreted by the government in this case, shows that harbor activities as a whole are furnished at rates which are noncompensatory. From data in the record relied upon by the government in its brief, page 56, it appears that, if depreciation be taken into account, the State incurred deficits in the operation of the harbor of $1,405,634 and $1,285,786 for the years 1939 and 1940, respectively. In Appellants' Reply Brief, it was shown by the record that the total revenues for those years, respectively, amounted to $2,380,822.06 and $2,483,253.87. From those figures, the conclusion follows that for each of these two years the revenues of the harbor would have had to be increased by 50 per cent in order that the revenues might equal expenses, including depreciation, interest on bonds, etc.

It is also shown in Appellants' Reply Brief, page 14, by a quotation from the government's expert witness, Differding, (R. 716), that an increase of 33⅓ per cent of revenue for wharf demurrage and storage would be necessary in order to make the charges for those services compensatory.

The only conclusion that can be drawn from these data is that the revenues of the harbor from services

other than wharf demurrage and storage were lower comparatively than the revenues derived from wharf demurrage and storage. Assuming the correctness of these data, it is clear that the alleged noncompensatory charges of appellants for wharf demurrage and storage did not at any time prior to the hearing before the Commission, directly or indirectly, cause or result in charges for services other than wharf demurrage and storage which were relatively higher than the charges for wharf demurrage and storage.

Furthermore, as shown on pages 15 and 16 of Appellants' Reply Brief, it appears from the Commission's Report, accompanying its Order of September 11, 1941, fixing minimum wharf demurrage and storage rates, that the Order would result in increases of revenue at only two of appellants' wharves, viz., Piers 45 and 56; that this increase of revenues at these piers, intended by the Commission to bring in sufficient revenue to make the charges compensatory, would be only $6,844.63; and that the total amount of tolls and dockage collected by appellants in 1940 was $1,044,130.99.

The conclusion follows that the so-called transfer of burden would consist of adding $6,844.63 to $1,044,130.99—an increase of 6/10ths of 1 per cent—an unsubstantial and negligible percentage of increase, which, under the *de minimis* rule, should be wholly disregarded.

Considering this unsubstantial amount, together with the fact that appellants' charges for services other than wharf demurrage and storage were not

relatively higher than their charges for wharf demurrage and storage, it is clear that there was no shifting of the burden from the users of one type of service to the users of other types.

The facts in this case are very different from those in *Baltimore & Ohio R. Co. v. United States,* 305 U. S. 507, relied upon by the Commission and the government and cited in the majority opinion herein. Here there were no "favored" or "selected" persons receiving special rates as there were in the *Baltimore & Ohio* case. Neither is there any proof that appellants' revenue from wharf demurrage and storage was less than "out-of-pocket" cost as contrasted with the situation in the *Baltimore & Ohio* case where the charges for storage produced revenue which was less than the "out-of-pocket" costs.

Appellants' rates of wharf demurrage and storage were open to all shippers and consignees who applied for them, and whose goods were of the class or classes to which the rates applied. All shippers who were charged for other services furnished by appellants were free to apply for and use the wharf demurrage and storage services on the same terms.

We submit, therefore, that there is no basis for the conclusion there was any discriminatory practice by appellants which could be a foundation for the Commission's Order of September 11, 1941, requiring appellants to charge prescribed minimum rates of wharf demurrage and storage.

Consequently, the Order of the Commission was not justified or warranted by the facts.

2.

THE UNITED STATES MARITIME COMMISSION HAS NO POWER TO FIX RATES OF WHARF STORAGE OR DEMURRAGE.

The final step in the reasoning in the majority opinion in this case is that, having found that the alleged discrimination above mentioned constituted a violation of Sections 16 and 17 of the Shipping Act, 1916, as amended, consisting of unreasonable preferences and advantages and unjust and unreasonable practices, by appellants, the Commission may fix a minimum rate of wharf storage and demurrage to be charged by appellants for the use of their harbor facilities in order to remove such alleged discrimination.

This conclusion is arrived at in the face of the sharp distinction made in Sections 17 and 18 of the Act between rates or charges on the one hand and regulations or practices on the other. That there is such a distinction is shown by the provisions of these sections from which we quote as follows:

"Sec. 17. That no common carrier by water in foreign commerce shall demand, charge, or collect any rate, fare, or charge which is unjustly discriminatory between shippers or ports, or unjustly prejudicial to exporters of the United States as compared with their foreign competitors. Whenever the board finds that any such rate, fare, or charge is demanded, charged, or collected it may alter the same to the extent necessary to correct such unjust discrimination or prejudice and make an order that the carrier shall discontinue demanding, charging, or col-

lecting any such unjustly discriminatory or prejudicial rate, fare, or charge.

"Every such carrier and every other person subject to this act shall establish, observe, and enforce just and reasonable regulations and practices relating to or connected with the receiving, handling, storing, or delivering of property. Whenever the board finds that any such regulation or practice is unjust or unreasonable it may determine, prescribe, and order enforced a just and reasonable regulation or practice."

"Sec. 18. That every common carrier by water in interstate commerce shall establish, observe, and enforce just and reasonable rates, fares, charges, classifications, and tariffs; and just and reasonable regulations and practices relating thereto and to the issuance, form, and substance of tickets, receipts, and bills of lading, the manner and method of presenting, marking, packing, and delivering property for transportation, the carrying of personal, sample, and excess baggage, the facilities for transportation, and all other matters relating to or connected with the receiving, handling, transporting, storing, or delivering of property.

* * * * * * *

"Whenever the board finds that any rate, fare, charge, classification, tariff, regulation, or practice, demanded, charged, collected, or observed by such carrier is unjust or unreasonable, it may determine, prescribe, and order enforced a just and reasonable maximum rate, fare, or charge, or a just and reasonable classification, tariff, regulation, or practice."

We quote also the pertinent part of Section 16 of the Act, as follows:

> "Sec. 16. * * * That it shall be unlawful for any common carrier by water, or other person subject to this Act, either alone or in conjunction with any other person, directly or indirectly—
>
> "First. To make or give any undue or unreasonable preference or advantage to any particular person, locality, or description of traffic in any respect whatsoever, or to subject any particular person, locality, or description of traffic to any undue or unreasonable prejudice or disadvantage in any respect whatsoever. * * *."

Sections 17 and 18 deal with two separate powers of the Maritime Commission, *the power to regulate rates and charges,* and *the power to establish and impose just and reasonable regulations and practices.*

It is admitted both in the order of the Commission and in the majority opinion that the power of the Commission to regulate rates and charges applies only to carriers by water and that the Commission has no power to fix or determine or regulate the rates or charges of "other person(s)" subject to the Shipping Act, such as persons furnishing wharf facilities or services.

With respect to the second power above mentioned, it is clear that the Commission has power to "determine, prescribe and order enforced a just and reasonable regulation or practice":

(1) "relating to or connected with the receiving, handling, storage or delivering of property" by either a common carrier by water in foreign or interstate commerce, or any "other person subject to this Act", or

(2) relating to any rate, fare, charge, classification or tariff established by a common carrier by water in interstate commerce.

The power to prescribe a regulation or practice of such "other person", that is to say, a person furnishing wharf facilities, is distinct and separate from the power to prescribe a regulation or practice as to rates or charges, since the last-named power may be exercised only as to common carriers by water in interstate commerce.

Notwithstanding the lack of power in the Commission to fix rates of persons furnishing wharf facilities or services, the Commission, by its Order of September 11, 1941, did fix minimum rates of wharf demurrage and storage and directed that such rates should be put into effect by appellants and other port authorities.

With regard to this Order, the majority opinion says:

> "But the Order of the Commission, though it pertains to demurrage charges, is not an exercise of *conventional rate-making.*" (Emphasis ours.)

To say the least, this statement is ambiguous, as the meaning of the word "conventional", as used in the sentence, is not clear.

From a consideration of the remaining part of the paragraph in which the word is used, we take the quoted statement to mean that the Order of the Commission establishes rates for wharf demurrage and storage only under special circumstances and for a particular purpose, to-wit: to prevent a purported discrimination which has no support in the record. This must be the meaning intended, for it is further stated that "the withholding of rate-making power for services other than water carriage does not qualify the *unlimited grant* to the Commission of the power to stop effectively all unjust and unreasonable practices in receiving, handling, storing or delivering property." (Emphasis ours.)

The opinion then proceeds to say that having this unlimited grant of power, the Commission may correct the "preferential and unreasonable results of noncompensatory charges" by requiring compensatory charges, that is to say, by fixing minimum rates of charges. All this, the opinion says, may be done under the Commission's power to establish a "just and reasonable regulation and practice."

Here we find a denial that the Commission has rate-making power as to wharf demurrage and storage, coupled with veiled and obscure language from which is drawn an inference that the Commission has an implied power to fix such rates in aid of its express power to make and enforce a "just and reasonable regulation and practice."

We submit that, if this conclusion is allowed to stand, it will amount to nothing less than judicial

legislation. The vice of the reasoning of the majority opinion is the assumption that the Shipping Act vests the Maritime Commission with an implied "unlimited grant" of power to use any means that it deems fit, including rate-making, to enforce a "practice" or a "regulation" established by the Commission.

This assumption is made, as the dissenting opinion truly states, "in the teeth of the plain words of the statute as enacted". This is apparent from the provisions of Sections 16 and 17 of the Act, which withhold from the Commission the rate-making power as to persons furnishing wharf facilities and services. No assumption of "unlimited grant" of power should be indulged in the absence of a specific grant of power to the Commission to enforce regulations or establish a practice by fixing minimum rates. By indulging such assumption or presumption, whichever it may be, the Court usurps the legislative function.

We agree, also, with the position taken in the dissenting opinion that the assumption of such "unlimited grant" of power amounts to reading into the Shipping Act, 1916, as amended, an additional provision that the Commissioners may establish minimum rates and charges for the use of wharf facilities and that such judicial enlargement of the provisions of the Act is all the more to be condemned when it operates as it does in this case to interfere with the power of a State agency conferred by the State Legislature to operate state-owned port facilities at lower rates than obtained in privately operated ports, if

such State agency deems it advisable in the public interest, to do so, for the purpose of encouraging the flow of commerce through its own ports.

We are convinced, also, that the dissenting opinion is correct when it states that the case of *Baltimore & Ohio R. Co. v. United States,* supra, does not support the order of the Commission. As explained in the dissenting opinion, that case arose under the Interstate Commerce Act. Under Section 15(1) of that act a power is given to the Interstate Commerce Commission to establish "regulations and practices" as to rates of transportation by rail in interstate commerce. It was properly held in the *Baltimore & Ohio* case that there was a violation of this section and Sections 3(1) and 6(7) of the Act by a practice of the carrier, which consisted in furnishing wharf storage rates at less than "out-of-pocket" cost to selected and favored shippers, because the practical result of this practice was to give a rebate of a transportation rate by rail to the persons making use of the below-cost wharf storage. The Order of the Commission, which was upheld in that case, forbade the continuance of the practice. In taking this action, the Commission acted within the orbit of its powers to prevent discrimination by the carrier in the application of its transportation rates.

In the case now before the Court, there is no question of discrimination in the application of a rate of a carrier. This case involves rates of persons furnishing wharf facilities and services which were furnished to all shippers and consignees applying for

the same at the established and published rates, and, as we have shown, without discrimination against any one of such persons.

Neither does the Order of the Commission find any support in *United States Nav. Co. v. Cunard*, 284 U. S. 474, 487, or *Warehouse Co. v. United States*, 283 U. S. 501, 513. The first of these cases involved the propriety of two sets of transportation rates established by a navigation company between the same two points, and the denial to certain classes of shippers of the lower of the two rates. The Court held that this practice should be prohibited. The condemnation of this practice, without imposing or fixing any rate for transportation service, was clearly within a power granted to the Maritime Commission by the Shipping Act of 1916.

The second of the two above mentioned cases arose under the Interstate Commerce Act, and dealt with discriminatory practices which consisted of the favoring by an interstate carrier by railroad of certain warehouse companies as shippers over other warehouse companies standing in the same relation to the railroad. The discriminatory practices consisted in payments made by the railroad to the favored companies, and not to others, for the performance of loading and unloading and other services which the companies performed for their own patrons but not for the railroad, thus giving the favored warehouse companies a preference and advantage over the other warehouses.

In both of these cases, the remedies afforded the complainants consisted in the condemnation and forbidding of the unlawful practices. These remedies were within the powers of the Commission. These cases are in contrast with the case at bar, in which the remedy, to-wit: regulation of a rate of a person furnishing a wharf facility is not within the power of the Commission.

3.

THE UNITED STATES MARITIME COMMISSION HAS NO JURISDICTION OVER WHARF STORAGE IN ANY RESPECT.

It is the firm conviction of the appellants, stressed in their briefs and argument that the Maritime Commission not only has no power to fix rates of wharf storage or demurrage, but has no jurisdiction in any respect over the general subject of wharf storage. Manifestly, if it lacks power generally over the subject matter, it has no power to fix minimum rates of wharf storage or demurrage.

In the majority opinion this contention of appellants was summarily disposed of in the following statement:

> "There can be no doubt that wharf storage facilities provided at shipside for cargo which has been unloaded from water carriers are subject to regulation by the commission."

It is not clear from this statement whether it applies only to property remaining on a wharf during

the allowable free time for the assemblying of cargo by the shipper prior to shipment or the removal of the same by the consignee after unloading by the carrier, or whether the statement applies also to property which, after the expiration of free time, is left in storage on the wharf by agreement between the shipper or the consignee and the party furnishing the wharf facilities.

We think it is clear that the statement is not correct if applied to the latter situation, and if incorrect as to this situation, the order of the Commission as to wharf demurrage and storage rates cannot stand.

Without going into detail, we call attention to the case of *Armour and Co. v. Alton R. Co. et al.* (C C.A.–7th), 111 Fed. 2d, 913, 915, in which the Court said with regard to stockyard service:

> "It might be said that in the rendition of a transportation service the Yards Company acts as agent of the carriers, but that in the performance of a stockyard service it acts as agent of the packer. *Adams v. Mills,* supra, * * *. It has also been said that 'Stockyard services do not commence until unloading ends; they end when loading begins' * * *."

To the same effect is *Swift & Co. et al. v. United States,* 316 U. S. 216, 86 L. Ed. 1391, 62 S. Ct. 948.

In *Ex Parte* 104, *Propriety of Operating Practices,* New York Warehousing, in the decision in 198 I. C. C. 134, affirmed on rehearing in 216 I. C. C. at 292, the Commission said, at page 195:

> "While the storage of property is clearly within the transportation service which carriers are obligated to furnish, their duty under these provisions extends only to that storage which is necessarily incidental to the transporting of such property. To be incidental business *the storage must be preliminary either to immediate transportation or immediate removal.*" (Emphasis added.)

The net result of these authorities is that wharf storage cannot be held to be furnished "in connection with a common carrier by water", as it is not a part of transportation.

The definition of "other person" in the first section of the Shipping Act, 1916, is worded as follows:

> "The term 'other person subject to this act' means any person not included in the term 'common carrier by water,' carrying on the business of forwarding or furnishing wharfage, dock, warehouse, or other terminal facilities *in connection with a common carrier by water.*" (Emphasis added.)

The conclusion cannot be escaped, therefore, that wharf storage is not furnished "in connection with a common carrier by water", and on account of this limitation contained in the definition of "other person", it must be held that the Maritime Commission has no jurisdiction whatsoever over the subject of wharf storage or the rates charged therefor.

For all the foregoing reasons, petitioners respectfully request that this Petition for a Rehearing be granted, and that the final decree of the United States District Court for the Northern District, appealed from, upon further consideration, be reversed.

Dated, San Francisco, California,
January 20, 1944.

Respectfully submitted,

ROBERT W. KENNY,
Attorney General of the State of California,

LUCAS E. KILKENNY,
Deputy Attorney General of the State of California,

Attorneys for Appellants and Petitioners.

CERTIFICATE OF COUNSEL

The undersigned counsel for the above named appellants and petitioners do hereby certify that the foregoing petition for a rehearing is presented in good faith and not for delay.

Dated, San Francisco, California,
January 20, 1944.

ROBERT W. KENNY,
Attorney General of the State of California,

LUCAS E. KILKENNY,
Deputy Attorney General of the State of California,

Counsel for Appellants and Petitioners.

Due service and receipt of a copy of the within Petition for Rehearing of Appellants is admitted this .....day of January, 1944.

.....
Solicitor General of the United States

.....
United States Attorney

.....
Assistant United States Attorney
Attorneys for Appellees,
the United States of America, and United States Maritime Commission

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Attorneys for Appellee,
Parr-Richmond Terminal Corporation

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1942

No. 778

CITY OF OAKLAND, ACTING BY AND THROUGH ITS BOARD OF PORT COMMISSIONERS,

Appellant,

vs.

THE UNITED STATES OF AMERICA, UNITED STATES MARITIME COMMISSION, ENCINAL TERMINALS, ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF CALIFORNIA.

STATEMENT AS TO JURISDICTION.

W. REGINALD JONES,
Counsel for Appellant.

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IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE NORTHERN DISTRICT OF CALIFORNIA,
SOUTHERN DIVISION

No. 22002-L

CITY OF OAKLAND, A MUNICIPAL CORPORATION, ACTING BY AND THROUGH ITS BOARD OF PORT COMMISSIONERS,

Petitioner and Appellant,

vs.

UNITED STATES OF AMERICA AND UNITED STATES MARITIME COMMISSION,

Defendants and Appellees,

ENCINAL TERMINALS, HOWARD TERMINAL AND PARR-RICHMOND TERMINAL CORPORATION,

Interveners and Appellees.

STATEMENT AS TO JURISDICTION ON APPEAL.

Pursuant to Rule 12 of the Supreme Court of the United States this statement is made disclosing the basis upon which it is contended that that Court has jurisdiction to review on appeal the final decree rendered by the above entitled Court in the above entitled proceeding.

I.

Statutory Provisions Sustaining Jurisdiction.

Section 210 of the Judicial Code as amended (U. S. Code Title 28, Sec. 47a) provides in its pertinent part, as follows:

"A final judgment or decree of the District Court in the cases specified in Section 41 of this title may be re-

1y

viewed by the Supreme Court of the United States if appeal to the Supreme Court be taken by an aggrieved party within sixty days after the entry of such final judgment or decree, and such appeals may be taken in like manner as appeals are taken under existing law in equity cases. And in such cases the notice required shall be served upon the defendants in the case and upon the attorney general of the state. The District Court may direct the original record instead of a transcript thereof to be transmitted on appeal. The Supreme Court may affirm, reverse or modify as the case may require the final judgment or decree of the District Court in the cases specified in Section 44 of this title * * *" (March 3, 1911, c. 231, sec. 210, 36 Stat. 1150; October 22, 1913, c. 32, 38 Stat. 220).

The appeal likewise is authorized by Title 28, Section 47, U. S. Code, reading in part as follows:

"* * * An appeal may be taken directly to the Supreme Court of the United States from the order granting or denying, after notice and hearing, an interlocutory injunction, in such case if an appeal be taken within thirty days after the order, in respect to which complaint is made, is granted or refused; and upon the final hearing of any suit brought to suspend or set aside, in whole or in part, any order of said Commission, the same requirement as to judges and the same procedure as to expedition and appeal shall apply." (October 22, 1913, c. 32, 38 Stat. 220.)

The Shipping Act, 1916 (U. S. Code, Title 46, Sec. 830; 39 Stat. 738) and particularly Section 31 thereof, and the Merchant Marine Act, 1936 (49 Stat. 1985) make the foregoing provisions applicable to decisions of the Maritime Commission. Said Section 31 provides as follows:

"The venue and procedure in the courts of the United States in suits brought to enforce, suspend or set aside in whole or in part, any order of the board, except as otherwise provided for, shall be the same as in similar

suits in regard to orders of the Interstate Commerce Commission, but such suits may also be maintained in any district courts having jurisdiction over the parties."

II.

The Order Whose Validity Is Involved.

On September 11, 1941, the United States Maritime Commission issued its order effective October 27, 1941, in a proceeding before it entitled "In the Matter of Services, Rates, Charges, Tolls, Rentals, Rules, Regulations, Classifications, Agreements, Acts, Practices and Operations of the San Francisco Bay Area Terminals Named Herein," and numbered Docket 555 in the records of said Commission. Said order, among other things, required this petitioner and appellant as one of the respondents in said proceeding (1) to file with the Commission and to secure its approval of certain municipal leases entered into between this petitioner and appellant and other persons; (2) to abstain from allowing greater periods of free-time within which cargo may be permitted to remain on the wharves operated by this petitioner and appellant than those prescribed by said Commission; (3) to abstain from publishing, demanding or collecting wharf demurrage and wharf storage rates less than the minimum rates prescribed by the Commission in said order; (4) to file with the Commission and keep open for public inspection schedules showing all the rates and charges assessed by this petitioner and appellant.

The order of the Maritime Commission involved is set out in full as an exhibit attached to the Petition and Bill for Injunction filed by this petitioner and appellant in the above-entitled Court.

The present appeal is taken from a decree of the above-entitled Court dismissing petitioner's and appellant's petition and bill to enjoin permanently the enforcement of the aforesaid order of the Maritime Commission.

III.

Date of Decree and of Presentation of Application for Appeal.

The final decree sought to be reviewed was entered on December 1, 1942, in the District Court of the United States for the Northern District of California, Southern Division. The petition for appeal herein is presented this 28th day of January, 1943.

IV.

The Questions Involved Are Substantial.

The questions presented by appellant in this appeal and which were urged on the Maritime Commission from the outset of its hearings in the proceeding above referred to, and which were presented to the above-entitled Court for its consideration, are of vital importance not only to appellant but as well to the appellee Commission itself and other public and private agencies all over the country engaged in the operation of wharves.

The assertion of jurisdiction by the Maritime Commission in this instance marks a reversal of administrative interpretation of the Shipping Act, 1916, that had been adhered to by the administrators of that statute since its enactment. That Congress had concurred in the former interpretation is evidenced by the history of other legislation dealing with the subject matter.

Summarized, it is the contention of this petitioner and appellant:

(1) That Congress cannot constitutionally empower the Maritime Commission to regulate a state agency in the operation of wharves;

(2) That Congress did not intend to empower the Maritime Commission to regulate state agencies in the operation of wharves;

(3) That the Maritime Commission has no jurisdiction over the rates as such of any wharfinger and cannot bestow upon itself such jurisdiction under the guise of denominating them purposes;

(4) That the Maritime Commission has no jurisdiction over storage rates since they are furnished independently of transportation; and

(5) That the Maritime Commission has no jurisdiction to compel petitioner to file with it for approval municipal leases and agreements.

It will thus be seen that aside from the first, the constitutional question, the issues presented deal first with whether or not the Commission has any jurisdiction in the premises, and if so, the extent of its powers. The importance of the first question is manifest. The remaining questions are of importance to the Maritime Commission, for the answers to them will determine to a large extent the Commission's responsibilities in administering the Shipping Act, 1916. The answers, likewise, will inform local public bodies and other persons operating wharves of any duties that may have been imposed upon them by that statute, and the extent to which, if at all, local law has been superseded by the enactment of that statute. It is necessary that the confusion caused by the assertion of jurisdiction by the Maritime Commission be resolved as soon as possible. For example, in the order complained of, the Commission held that a lease entered into between the City of Oakland and Howard Terminal, one of the respondents in the proceeding before the Commission, was not valid until filed with and approved by the Commission as an agreement specified in Section 15 of the Shipping Act, 1916. This conclusion was reached notwithstanding the lease in question was entered into in 1914, two years before the enactment of the Shipping Act.

The assumption of jurisdiction by the Commission thus confronts local public officers with the necessity of determining at their own peril whether their actions are to be guided in a given instance by federal law or by the provisions of the municipal charter or other local law under which they have operated heretofore. If they erroneously decide it one way they subject themselves to the severe penal provisions of the Shipping Act, 1916. If they erroneously decided the other way, they subject themselves to personal liability at the suit of a taxpayer.

The Shipping Act, 1916, does not purport to bring municipal corporations within its purview. The only way any wharfinger, whether a public body or private individual, is brought within the scope of the statute, is by means of the definitions contained in Section 1 of that act, the pertinent provisions of which are as follows:

> "The term 'other persons subject to this act' means any person not included in the term 'common carrier by water,' carrying on the business of forwarding or furnishing wharfage, dock, warehouse, or other terminal facilities in connection with a common carrier by water."
>
> "The term 'person' includes corporations, partnerships, and associations, existing under or authorized by the laws of the United States, or any state, territory, district, or possession thereof, or of any foreign country."

It must be determined whether or not a state or a state agency is a person within the scope of those definitions.

In considering whether or not a state was included within the definition of the word "person," in another statute the Supreme Court of the United States recently said there was no hard and fast rule in that connection.

> "The purpose, subject matter, the context, the legislative history, and the executive interpretation of the

statute are aids to construction which may indicate an intent, by use of the term, to bring state or nation within the scope of the law."

Georgia v. *Evans*, — U. S. —, 62 S. Ct. 972, 974; 86 L. Ed. 667.

It is the contention that the various factors mentioned by the Supreme Court indicate an intention on the part of Congress not to include governmental bodies as subject to regulation under the Shipping Act.

The question has not been decided by any court except in the instant proceeding.

It is true that in *McNeely & Price Co.* v. *Philadelphia Piers, Inc.*, 196 Atl. 846, the Pennsylvania court expressed the view that the Maritime Commission had been given such jurisdiction, but this statement was by way of *dicta* only and the court marshaled nothing to support it.

Consequently, the question is still open, is substantial, and should be decided by the Supreme Court.

Independently of whether or not a public body is included within the definition of the word "person", as used in the Shipping Act, 1916, it is next contended that that statute gives the Commission no jurisdiction over the rates as such of any wharfinger whether it be a public body or a private enterprise.

In support of its assumption of power, in this connection the Commission relies upon Sections 16 and 17 of that act.

The material portion of Section 16 reads as follows:

"That it shall be unlawful for any common carrier by water, or other persons subject to this act, either alone or in conjunction with any other person, directly or indirectly—

"First. To make or give any undue or unreasonable preference or advantage to any particular person, locality, or description of traffic in any respect whatsoever, or to subject any particular person, locality, or description of traffic to any undue or unreasonable

prejudice or disadvantage in any respect whatsoever • • •

"Whoever violates any provision of this section shall be guilty of a misdemeanor punishable by a fine of not more than $5,000 for each offense."

Section 17 is in the following language:

"That no common carrier by water in foreign commerce shall demand, charge, or collect any rate, fare, or charge which is unjustly discriminatory between shippers or ports, or unjustly prejudicial to exporters of the United States as compared with their foreign competitors. Whenever the board finds that any such rate, fare, or charge is demanded, charged, or collected it may alter the same to the extent necessary to correct such unjust discrimination or prejudice and make an order that the carrier shall discontinue demanding, charging, or collecting any such unjustly discriminatory or prejudicial rate, fare, or charge.

"Every such carrier and every other person subject to this act shall establish, observe, and enforce just and reasonable regulations and practices relating to or connected with the receiving, handling, storing, or delivering of property. Whenever the board finds that any such regulation or practice is unjust or unreasonable it may determine, prescribe, and order enforced a just and reasonable regulation or practice."

The Shipping Act, 1916, is not plenary. Compared to the Interstate Commerce Act, it is fragmentary. From the necessities of the case very little regulation of foreign vessels, for example, could be accomplished. The structure of the act demonstrates that Congress did not attempt to subject wharfingers to even that much regulation.

Thus, it will be seen that Section 17, dealing with foreign commerce, applies in both its first and second paragraphs to common carriers by water in foreign commerce, whereas, only the second paragraph of that section applies to other

persons. It is significant that the first paragraph deals with rates, and the second paragraph, containing no mention of rates, is concerned with regulations and practices. Significant also is Section 18 of the act which deals with interstate commerce. No mention of "other person" is found in that section. As a matter of fact, of the original forty-four sections in the statute, the phrase "other person" appears only in Sections 15, 16, 17, 20 and 21.

The first paragraph of Section 18 is the only portion of the section here material. As has been stated, the phrase "other person" does not appear in the entire section. That paragraph reads as follows:

"That every common carrier by water in interstate commerce shall establish, observe and enforce just and reasonable rates, fares, charges, classifications and tariffs and just and reasonable regulations and practices relating thereto and to the issuance, form and substance of tickets, receipts, bills of lading, as a matter of presenting, marking, packing and delivering property for transportation, the carrying of personal, sample and excess baggage, the facilities for transportation and all other matters relating to or connected with the receiving, handling, transporting, storing or delivering of such property."

It will be seen that Congress has combined the matter of rates, fares and charges, which appeared in the first paragraph of Section 17, with reasonable regulations and practices which appeared in the second paragraph of that section. From this it is fairly to be inferred that Congress had a reason for dividing Section 17 into two paragraphs and to treat the persons included in the second paragraph in a manner different from those mentioned only in the first.

There are many further considerations to support the proposition that Congress has not intended to give the Commission any jurisdiction over the rates of wharfingers,

and that the Commission should not be allowed to assume such jurisdiction by means of subterfuge.

The question has not been decided by any court, is a substantial one, and should be decided by the Supreme Court.

Even if it were to be assumed that the Commission had jurisdiction over certain rates of wharfingers, it cannot be said to have the power to regulate storage rates. Wharf storage is arranged for independently by the shipper or consignee and the water carrier has no interest in it. It is furnished independently of transportation. Consequently, it is not carried on "in connection with a common carrier by water" within the definition of Section 1 of the Shipping Act. If it is not so carried on it is excluded by definition from the operation of the act. This issue is governed by the principles of *Swift & Co.* v. *U. S.*, — U. S. —, 62 S. Ct. 948, 956, and the order of the Commission and the decree of the above-entitled Court are erroneous as being in conflict with that decision.

V.

Cases Believed to Support the Jurisdiction.

In *Swayne & Hoyt* v. *U. S.*, 300 U. S. 297, 57 S. Ct. 478, the question involved was the validity of an order of a predecessor of the appellee Commission in the administration of the Shipping Act, 1916. The appeal was taken from a final decree of the United States District Court for the District of Columbia and the procedure followed was that provided in Sections 47 and 47a, Title 28, U. S. Code.

Since the statutory provision for appeals affecting an order of the Maritime Commission are identical with the case of those involving orders of the Interstate Commerce Commission, the numerous cases in which the Supreme Court has reviewed decisions of the statutory three-judge courts in the latter case are believed to support the jurisdiction in the case at bar. Compare *Baltimore & Ohio R. R. Co.* v. *U. S.*, 305 U. S. 506.

VI.

Opinion Below.

The District Court of the United States for the Northern District of California, Southern Division, filed its opinion in this case on August 20, 1942, and a copy of the opinion of the Court is appended to this statement as "Exhibit A."*

Dated: January 28, 1943.

Respectfully submitted,

W. Reginald Jones,
Port Attorney,
Attorney for Petitioner and Appellant,
City of Oakland.

* Clerk's Note.—The Opinion of the District Court is printed as an Appendix to the Jurisdictional Statement in the case of *California, et al.* v. *U. S., et al.*, No. 760, October Term, 1942.

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SUPREME COURT

OF THE

UNITED STATES

OCTOBER TERM, 1943

No. 22

CITY OF OAKLAND, acting by and through its Board of Port Commissioners,

Appellant,

vs.

THE UNITED STATES OF AMERICA AND UNITED STATES MARITIME COMMISSION,

Appellees.

Appeal from the District Court of the United States for the Northern District of California

OPENING BRIEF OF APPELLANT CITY OF OAKLAND.

W. REGINALD JONES,
Port Attorney,
Counsel for Appellant.

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SUPREME COURT

OF THE

UNITED STATES

OCTOBER TERM, 1943

No. 22

CITY OF OAKLAND, acting by and through its Board of Port Commissioners,

Appellant,

vs.

THE UNITED STATES OF AMERICA AND UNITED STATES MARITIME COMMISSION,

Appellees.

Appeal from the District Court of the United States for the Northern District of California

OPENING BRIEF OF APPELLANT CITY OF OAKLAND.

I.

REFERENCE TO OPINION OF COURT BELOW IN THE ORIGINAL REPORT.

The opinion of the Court below in this cause is reported under the title of *State of California, et al. v. United States, et al.; City of Oakland v. Same*, 46 F. Supp. 474.

II.

STATEMENT OF GROUNDS ON WHICH JURISDICTION ON THIS APPEAL IS INVOKED

The jurisdiction of this Court to entertain this appeal is provided expressly by statute. The cause being a proceeding to review an order of the United States Maritime Commission, the jurisdiction is that set up in connection with decisions of the Interstate Commerce Commission. The following statutes are pertinent.

Section 210 of the Judicial Code as amended (U. S. Code Title 28, Sec. 47a) provides in its pertinent part, as follows:

> "A final judgment or decree of the District Court in the cases specified in Section 44 of this title may be reviewed by the Supreme Court of the United States if appeal to the Supreme Court be taken by an aggrieved party within sixty days after the entry of such final judgment or decree, and such appeals may be taken in like manner as appeals are taken under existing law in equity cases. And in such cases the notice required shall be served upon the defendants in the case and upon the attorney general of the state. The District Court may direct the original record instead of a transcript thereof to be transmitted on appeal. The Supreme Court may affirm, reverse or modify as the case may require the final judgment or decree of the District Court in the cases specified in Section 44 of this title * * * " (March 3, 1911, c. 231, sec. 210, 36 Stat. 1150; October 22, 1913, c. 32, 38 Stat. 220).

The appeal likewise is authorized by Title 28, Section 47, U. S. Code, reading in part as follows:

> "* * * An appeal may be taken directly to the Supreme Court of the United States from the order granting or denying, after notice and hearing, an interlocutory injunction, in such case if an appeal be taken within thirty days after the order, in respect to which complaint is made, is granted or refused; and upon the final hearing of any suit brought to suspend or set aside, in whole or in part, any order of said Commission, the same requirement as to judges and the same procedure as to expedition and appeal shall apply." (October 22, 1913, c. 32, 38 Stat. 220.)

The Shipping Act, 1916 (U. S. Code, Title 46, Sec. 830; 39 Stat. 738) and particularly Section 31 thereof, and the Merchant Marine Act, 1936 (49 Stat. 1985) make the foregoing provisions applicable to decisions of the Maritime Commission. Said Section 31 provides as follows:

> "The venue and procedure in the courts of the United States in suits brought to enforce, suspend or set aside in whole or in part, any order of the board, except as otherwise provided for, shall be the same as in similar suits in regard to orders of the Interstate Commerce Commission, but such suits may also be maintained in any district courts having jurisdiction over the parties."

III.

STATEMENT OF THE CASE.

The underlying issue presented on this appeal is the authority of the United States Maritime Commission to regulate the rates and practices of a municipal corporation engaged in the operation of public docks.

More specifically, the question involves the validity of an order of the Commission (1) requiring certain leases made by the City of Oakland to be submitted to the Commission for its approval or denunciation; (2) shortening free time allowances; (3) changing wharf storage rates from the existing daily basis by requiring the assessment of a preliminary penalty charge and a subsequent exaction of a handling charge with the storage charge placed on a period basis.

Free time is the period allowed for the assembling of cargo on the wharf preliminary to loading aboard the vessel, or for the delivery of cargo after discharge by the vessel (Report of the Comm., R. p. 23). Wharf storage (or wharf demurrage) is the charge accruing on cargo remaining on the wharf after the expiration of free time (*Ibid.*, R. p. 26).

A handling charge, as defined by the Commission, "compensates the terminal operator for a portion of the fixed costs which attach to cargo that is placed on time storage. Such fixed costs include handling, delivery to consignee at the end of storage, high piling where required, billing and certain overhead expenses incidental

to the receiving and delivery of cargo on storage." (*Ibid.*, R. p. 36.) Appellant accepts this definition for introductory purposes only, reserving the right later to question the cogency of any one of the factors assigned should it become material.

Strictly speaking, wharf demurrage and wharf storage are based on opposite concepts, though both fall within the definition above given. Wharf demurrage is a penalty rate, on a level sufficiently high to force the cargo off the dock during the free time period (*Ibid.*, R. p. 27). Wharf storage, on the other hand, is designed to produce some additional revenue by encouraging, through a lower rate, the cargo to remain on the dock beyond the free time period (Witness McCarl, R. p. 341).

Generally, the operator of a narrow transit shed (the covered space on the wharf or pier) favors a penalty rate because stored cargo is apt to interfere with the movement of other goods; whereas, when the shed is broad, permitting much freer movement, the tendency is to assess the charge on the additional revenue basis. At San Francisco, for example, with its finger-pier construction, the penalty charge is assessed. (Report of the Comm., R. p. 27), save as to certain facilities, while at Oakland, with wider, more modern sheds (Witness McCarl, R. p. 340-1), the lower wharf storage rates are prescribed.

This cause is the outgrowth of an order of the Maritime Commission of November 7, 1939, initiating, on its own motion, an investigation into the rates and practices

of wharfingers on San Francisco Bay, being docketed as No. 555 on the records of the Commission (R. p. 125 *et seq.*) This appellant was named as a respondent. By supplemental orders, the appellants in the companion appeal (Docket 20) were made parties. (R., pp. 127-29.)

Hearings were had February 13-21, 1940 and, after continuances, October 7-9, 1940. (R. pp. 53, 71.) At the outset, and again at the termination of the hearing, this Appellant moved to dismiss the proceeding as to it on the ground that the Maritime Commission had no jurisdiction over a municipal corporation or a state agency, and that Congress had no constitutional power to regulate the governmental activities of such local body (R., p. 71). The motions were denied (R. pp. 53, 71).

Thereafter, Appellant filed with the Commission its opening and closing briefs urging on it not only all the points included within the motions to dismiss, but also all other points presented to the Court below (R., pp. 53, 71); and the matter was orally argued before the Commission on July 9, 1941 at Washington, D. C., at which time appellant reiterated all of such points (R., pp. 54, 71).

That thereafter and on the 11th day of September, 1941 said Commission made and filed its Order in said proceeding wherein and whereby it found, among other things:

1. That Congress had constitutional power to regulate the operations of Appellant in the matter now carried on.

2. That Appellant was within the definition of "other persons" as defined in Section 1 of the Shipping Act of 1916.

3. That Appellant is required by Section 15 of the Shipping Act, 1916 to file with and have approved by the Commission a certain lease with Howard Terminal, one of the other respondents named in said proceeding, dated November 5, 1914, by which said Howard Terminal leased certain waterfront facilities from the City of Oakland.

4. That Appellant is required by Section 15 of the Shipping Act, 1916 to file with and have approved by the Commission a certain agreement between the City of Oakland and McCormick Steamship Company, a common carrier by water, dated March 1, 1932, whereby said McCormick Steamship Company occupies certain waterfront facilities.

5. That Appellant has failed in certain instances to give reasonable notice of tariff changes and prescribing a thirty (30) day prior notice in the future.

6. That the free time periods allowed by Appellant for the removal of cargo from the facilities under its jurisdiction are unduly prejudicial and preferential in violation of Section 16, and unreasonable in violation of Section 17 of the Shipping Act, 1916, as amended, and that any such allowance greater than the period set forth in Table I attached to said Order, which in general reduces such free time allowance from the existing ten

(10) day period allowed by Appellant to five (5) and seven (7) days, will in the future be unduly prejudicial and preferential and unreasonable.

7. That Appellant's rates, rules, regulations and practices relating to wharf demurrage and wharf storage are non-compensatory resulting in unequal treatment of non-users of such services. That said rates, rules, regulations and practices are unduly prejudicial and preferential in violation of Section 16 and unreasonable in violation of Section 17 of the Shipping Act, 1916 as amended and that in the future the assessing and collecting of any charge for such wharf demurrage and wharf storage lower than the schedule of charges prescribed in said order would be unduly prejudicial and preferential and unreasonable. That the rates prescribed for such wharf storage by said Order are set forth in Exhibit 1 made a part hereof and attached hereto (R., pp. 13-45).

That Appellant filed with the Commission its petition for reconsideration on October 15, 1941 (R. pp. 59, 72) which was denied by order of October 24, 1941 (R., p. 73).

The present proceeding to review the order of September 11, 1941 was filed in the District Court on October 21, 1941. At the trial the matter was presented on the record adduced before the Commission, which consisted of the various notices, orders and moving papers of the Commission, eleven volumes, consisting of 1904 pages, of the testimony before the Commission, and

the 172 exhibits which had been before the Commission (Minute Entry of Trial, R. pp. 79-80).

After an adverse decision in the Court below, this appeal followed.

IV.

SPECIFICATION OF ASSIGNED ERRORS INTENDED TO BE URGED BY THIS APPELLANT.

Appellant City of Oakland intends to urge in this brief and on oral argument all of the specifications of errors heretofore assigned, that is to say:

(1) The Court erred in making and entering its final decree denying the permanent injunction prayed for, and in dismissing the petition and bill;

(2) The Court erred in refusing to make and enter its decree annulling, setting aside and permanently enjoining the order of the United States Maritime Commission designated in said petition and bill;

(3.) The Court erred in finding and concluding that this Appellant is subject to the power of Congress to regulate interstate and foreign commerce in respect to the activities affected by said order of said Commission;

(4) The Court erred in finding and concluding that this Appellant is an "other person" as defined in the Shipping Act, 1916, as amended;

(5) The Court erred in finding that Appellant's rules, regulations and practices with respect to free-time were or are unduly preferential and 'prejudicial' within the meaning of Section 16 of the Shipping Act, 1916, or unreasonable regulations and practices within the meaning of Section 17 of said act;

(6) The Court erred in finding that the evidence before the Commission and the Court is sufficient to establish that Appellant's rates for wharf storage are unduly preferential or prejudicial within the meaning of Section 16 of the Shipping Act, 1916, as amended, or that they constitute an unreasonable regulation or practice within the meaning of Section 17 of said act in that the evidence establishes that such rates are greater than Appellant's out-of-pocket costs incurred in connection with such service;

(7) The Court erred in finding that there was evidence to support the finding of the Commission that the minimum rates for wharf demurrage and wharf storage prescribed by the Commission are not in excess of the cost of the service to this Appellant, if by cost is meant out-of-pocket cost of such service;

(8) The Court erred in finding that the services performed by Appellant in connection with wharf storage and wharf demurrage are carried on in connection with a common carrier by water;

(9) The Court erred in finding that leases between this Appellant and its lessees are agreements subject to the provisions of Section 15 of the Shipping Act, 1916, as amended.

V.

SUMMARY OF ARGUMENT.

Appellant proposes to urge on this Court the following propositions:

A. That the power of Congress does not extend to the regulation of state agencies engaged in the operation of wharves; that the authorities indicate that the powers of Congress and the states in this connection are concurrent at the most and, at the least, the question being a local one, regulation of this activity belongs primarily to the states.

B. That Congress did not intend to empower the Maritime Commission to regulate state agencies in the operation of wharves; that ordinarily, the word "person" does not include a public body, by construction of which word is the only means of including a municipal corporation within the provisions of the Shipping Act, 1916; that neither Congress nor the predecessors of the Commission understood a public agency to be subject to the Act, and that this was the understanding of those engaged in such operations.

C. That the Maritime Commission has no power over the rates of any wharfinger; that the Shipping Act, 1916, makes this plain; that the attempt of the Commission to seize jurisdiction in this proceeding is based on a pretended power to remove discrimination; that the record shows that no discrimination in fact exists; that Appellant more than meets its out-of-pocket expenses in

connection with the particular rates assailed, which is an answer to the charge of discrimination, since it casts no burden on the users of other services.

D. That the order of the Commission with respect to free time allowance is without support in the record, and the Commission marshals no facts to support its conclusion.

E. That the Commission has no jurisdiction over wharf storage in any event, because the Shipping Act, 1916, excludes it, the service not being rendered in connection with a common carrier by water; that the service is one arranged for directly between the wharfinger and the shipper or consignee, the water carrier having no interest in it; and, finally

F. That the Commission has no authority over municipal leases and agreements.

VI.

ARGUMENT.

Before the Commission, and again before the Court below, in pleadings and briefs (see, for example, Petition and Bill for Injunction, paragraph VI, R., p. 55), this appellant urged that it was deprived of a fair hearing because the Commission acted as accuser, prosecutor, witness and judge. Neither the order of the Commission nor the opinion of the Court passed on it. The point as such is not pressed on this appeal. Therefore the question of due process of law is not now involved.

Nonetheless an allusion to the circumstances is proper in aiding this Court to determine the degree of finality that should be accorded the Commission's order.

We shall see that the statute under which the Commission purports to act does not, by its terms, give the authority invoked, and that jurisdiction, in the words of the Commission, is "assumed" (R., p. 18); that the power to regulate rates of wharfingers is engrafted on the power to remove discrimination; that this power was thought not to exist until about the time of the institution of the present proceeding, either by the administrators of the Shipping Act, 1916, for the first twenty-four years of its being, by Congress, by the Federal Coordinator of Transportation, or by those engaged in the operation of wharves.

Thus the question of jurisdiction is at least doubtful, and its solution depends upon an administrative finding

of discrimination. If that finding is given color of finality, we have the spectacle of a commission lifting itself by its bootstraps.

The Commission was the accuser. It instituted the proceeding on its own motion, making the preliminary finding (R., p. 126):

> "That all or some of said terminals . . . make rates . . . and engage in acts and practices which are unfair, unjust or unduly prejudicial or preferential, or otherwise in violation of the law, in that all or some of said terminals: . . .
>
> "3. Fail to establish, observe and enforce just and reasonable regulations and practices relating to or connected with the receiving, storing or delivery of property, as required by section 17 of the Shipping Act, 1916, as amended . . ."

The Commission was the prosecutor. Note the appearances for the Commission (Mr. Scoll, Mr. Slade, Mr. Differding and Mr. Arnold) in the Report of the Commission (R., p. 14). These gentlemen had the active management and direction of the hearing. The most casual perusal of the transcript of the testimony before the Commission substantiates this. (See, for example, R., p. 237 *et seq.*)

The Commission was the judge, which goes without saying.

But the Commission was also the witness, the witness upon whose testimony the order was based. Mr. Differ-

ding, who also appeared, as noted above, of counsel for the Commission, was engaged as a special expert by the Commission for the proceeding (R., p. 238). He was its principal witness and gave opinion testimony on which the Commission relied in making its order (R., p. 18, 29, 36). Most of his testimony was omitted from the printed record, but that which remains consumes 67 pages (R., pp. 237-74; 709-39). In addition, he cross-examined appellant's witnesses. (See R., p. 304-21; 344-53.)

We do not charge any of these gentlemen with unfairness. We do say the procedure, however, is peculiarly adapted to unfairness if the decision that grows out of it is not to be subjected to the searching light of judicial scrutiny. We do not contend that we are entitled to a trial *de novo*, but we do affirm that under circumstances such as those here presented, judicial review must be real, the facts purporting to support the Commission's order must be clearly to appear, if the procedure is to stand the test of constitutionality. And under the familiar rule of avoiding constitutional questions if an alternative can be found, we ask for that kind of review by this Court.

To give any degree of finality to the finding of discrimination in this proceeding is to place this appellant, and all who may follow it in like proceedings hereafter, in a position of utter helplessness.

In the language of Chief Justice Taft, in *Tumey* v. *Ohio*, 273 U. S. 510, 532 (47 S. Ct. 437; 71 L. Ed. 749):

> "Every procedure which would offer a possible temptation to the average man as a judge to forget the burden of proof required to convict the defendant, or which might lead him not to hold the balance nice, clear and true between the state and the accused, denies the latter due process of law."

See also, Mr. Justice Field, dissenting, in *Spring Valley Water Works* v. *Schottler*, 110 U. S. 347, 364 (4 S. Ct. 48; 28 L. Ed. 173), and *Abrams* v. *Jones*, 35 Ida. 532; 207 Pac. 724, 727.

If one were possessed of a prejudgment, and wished to fasten the corollaries of that conclusion on another, he could devise no scheme better adapted to his purpose than the one here employed by the Commission. For could he not make an accusation, prosecute it, employ as a witness one who believed as he did, and then, having gone through the form of notice and hearing, disregard all conflicting testimony, and having some evidence in the record to support it, assert that his judgment is now unassailable?

Before proceeding with the substance of the argument, a further fact should be emphasized. This appeal does not affect the wartime activities of the Maritime Commission. The investigation was initiated, as we have seen, in November, 1939. There is no suggestion, on

or off the record, that national interests in any way are prejudiced by the maintenance of the existing rates, nor any intimation that the present tariff impedes the flow of interstate or foreign commerce or discriminates against either in favor of local trade. Therefore, no consideration of exigencies of war have any place in this deliberation.

Point A. Congress Cannot Constitutionally Empower the Regulation of State Agencies in the Operation of Wharves.

The Court below decided this point against Appellant largely on the authority of *United States* v. *California*, 297 U. S. 175; 56 S. Ct. 421; 80 L. Ed. 567. Possibly, because it diverges from counsel's conception of the proper interrelation of our state and federal governments, he questions its soundness, at least to the extent that it be not extended. At any rate, this Court must pass on the question before it finally can be settled, and there would seem to be some very cogent reasons why Congress might have power to regulate a state operated railroad and yet deny that power with respect to wharves.

The facilities operated by this Appellant are under the control of the Board of Port Commissioners, a department of the City, and its legislative body insofar as harbor matters are concerned. (*City of Oakland* v. *Hogan*, 41 Cal. A. 2nd 333; 106 Pac. 2nd 987). It exercises the power granted it by amendments to the City Charter (Statutes of California, 1911, p. 1551), adopted in 1927, with subsequent amendments (Statutes of California, 1927, p. 1978; *ibid.*, 1931, p. 2677; *ibid.*, 1937, p. 2631).

This Court was very careful to limit its holding in the California case to the precise set of facts before it, namely, the operation of a railroad by the State of California, acting through its public agency, the Board of State Harbor Commissioners for San Francisco Harbor. In effect it goes no further than did the Court in *South*

Carolina v. *United States*, 199 U. S. 437; 26 S. Ct. 110; 50 L. Ed. 261, and in *Ohio* v. *Helvering*, 292 U. S. 360; 54 S. Ct. 725; 78 L. Ed. 1307, where it refused to recognize the tax immunity of a state engaged in the liquor business, or in *Helvering* v. *Powers*, 293 U. S. 214, 55 S. Ct. 171, 79 L. Ed. 291, where a similar pretended immunity was found lacking in the operation of a street railroad business. In the California case, the Court was considering the amenability of the State to the sanctions of the Federal Safety Appliance Act insofar as was concerned the operation of a belt line railroad. The Court said, at page 185:

> "California by engaging in interstate commerce *by rail*, has subjected itself to the commerce power and is liable for a violation of the Safety Appliance Act, as are other carriers . . . . The Federal Safety Appliance Act is remedial, to protect employees and the public from injury because of defective railway appliances . . . and to safeguard interstate commerce itself from destruction or injury due to defective appliances upon locomotives and cars used on the highways of interstate commerce, even though their individual use is wholly intrastate . . . The danger to be apprehended is as great and commerce may be equally impeded whether the defective appliance is used on a railroad which is state-owned or privately-owned. No convincing reason is advanced why interstate commerce and persons or property concerned in it should not receive the protection of the act whenever a state as well as a privately-owned carrier, brings itself within the sweep of

the statute, or why *its all embracing language* should not be deemed to afford that protection." (Italics supplied.)

Previously, at page 183, the Court had recognized that the State "in operating its railroads . . . is acting within a power reserved to the states".

Counsel must concede that this decision would have a persuasive effect on the present issue, especially in view of the Court's further statement on page 183 that the distinction whether the State was acting in a proprietary or governmental capacity was immaterial, were it not for differences we have mentioned and shall now point out.

We should remember that this Court has never held that Congress has the power to regulate a state which engaged in the operation of wharves.

The federal commerce power is incapable of precise definition. Any investigation of the subject, whether it be cursory or painstaking, demonstrates that each particular case must be decided upon its own facts. While it may be true that a state in operating a railroad is subject to the regulations of commerce it can quite consistently be held that in operating the wharves it does so with an untrammelled hand. Thus, not every activity of the state which affects interstate commerce is subject to the scrutiny of Congress.

Take, for example, the matter of streets and high-

ways. It cannot be doubted that they constitute important facilities of interstate commerce. The same is true of bridges, whether they be toll bridges or free bridges, connecting such highways. While under the commerce as well as the postal power, the federal government has contributed moneys for the construction of such projects, and in such cases has exercised a supervising or consulting right, yet it cannot be doubted that the construction, operation and maintenance of, and even the matter of tolls on, such bridges or highways, if the state seeks to impose them, are matters strictly within the power of the state. No court decision yet has advanced so far the idea of central authority as to suggest that Congress might regulate any of these matters contrary to the wishes of the state involved. This, of course, is true notwithstanding such facilities are important arteries of such commerce.

In its nature a wharf partakes of the character of a public street. See, for example, *Clark* v. *McCarthy*, 1 Cal. 453, 454, where a wharf is spoken of as a continuation of a public street. Compare Subdivision 11, Section 212 of the Oakland City Charter (Statutes of California, 1927, p. 1978) where the Board of Port Commissioners is given the power "to use, for the loading and unloading of cargo with the right to collect tolls, dockage and other terminal charges thereon, such portions of the streets of the City of Oakland ending or fronting upon the water areas of the harbor of said city as may be used for said purposes".

Highways, wharves and ferries are treated by the authorities as belonging to the same class. See, for example, *Talcott* v. *Pine Grove*, Fed. Cas. No. 13735, 23 Fed. Cas. 652; 660-661, where it is said, in part:

> "3 Kent Comm. 458 says that there are certain franchises which are understood to be royal privileges in the hands of the subjects. The right to set up a ferry or a road and the taking of tolls is one of them, and in this the public has an interest. In 2 Bl. Comm. 37 it is said that 'A franchise is a branch of the royal prerogative in the hands of the subjects', such as the right of taking tolls for a bridge, way or wharf. (See 3. Bl. Comm. 219.) . . . "

Again in *Peo.* v. *San Francisco & Ala. R. R. Co.*, 35 Cal. 606, 619, the Court says:

> "A ferry is but a substitute for a bridge where a bridge is impracticable and its end and use is the same. Like a toll-bridge it is a franchise created for the use and convenience of the traveling public as a link in the highway system of the country . . . "

Therefore, if it be conceded that Congress has no right to prescribe the tolls a state may charge for one of its bridges or highways, does not the same conclusion follow with regard to wharves operated by the state?

The view that regulation of matters of this class did not reside in Congress but was reserved to the state was laid down by Chief Justice Marshall in *Gibbons* v.

Ogden, 9 Wheat. 1 (6 L. Ed. 23), at page 203, where he said:

> "But the inspection laws are said to be regulations of commerce . . . That inspection laws may have a remote and considerable influence on commerce will not be denied; but that power to regulate commerce as the source from which the right to pass them is derived cannot be admitted . . . These form a portion of that immense mass of legislation, which embraces everything within the territory of a state, not surrendered to the general government; all of which can be most advantageously exercised by the states themselves. Inspection laws, quarantine laws, health laws of every description, as well as laws regulating the internal commerce of the state *and those which respect turnpike roads, ferries, etc.* are component parts of this mass.
>
> "No direct general power over these objects is granted to congress; and consequently they remain subject to state regulations . . . " (Italics supplied.)

Not unduly to lengthen this discussion, your attention is called to *Port Richmond Ferry Co. v. Board of Chosen Freeholders*, 234 U. S. 317, 34 S. Ct. 821, 58 L. Ed. 1330, where the state's right to regulate the rates of an interstate ferry departing from its shores is upheld.

It has been laid down in many cases that there are three fields of action involving interstate commerce; the first of which is the one in which Congress may act

exclusively and the third of which is that which is reserved absolutely to the state. The middle ground is a twilight zone where the respective powers of the state and Congress come together. It is in that zone where the regulation of public wharves falls. There it is true the state may not act in such a manner as to impose a burden upon interstate commerce, nor discriminate against it in favor of local trade. But that is not to deny the state's power of regulation. See, for example, *Conway v. Taylor's Exec.*, 1 Bl. 603, 17 L. Ed. 191 where the Court says:

> "Undoubtedly the states in conferring ferry rights may pass laws so infringing the commercial power of the nation that it would be the duty of this court to annul or control them. 13 How. 519, *Wheeling bridge case*. The function is one of extreme delicacy and only to be performed where the infraction is clear. The ferry laws in question in this case are not of that character. We can find nothing in them transcending the legitimate exercise of the legislative power of the state."

Or, as said in *Fanning v. Gregoire*, 16 How. 524, 14 L. Ed. 1043, in upholding the right of the State of Iowa to require a franchise for a ferry across the Mississippi River:

> "The argument that the free navigation of the Mississippi River guaranteed by the ordinance of 1787, or any right that may be supposed to arise from the exercise of the commercial power of congress, does not apply in this case. Neither

> of those interfere with the police power of the state in granting ferry franchises. *When navigable rivers within the commerce power of the union may be obstructed, one or both of these powers may be invoked.*" (Italics supplied.)

As has been indicated, no federal decision as yet has upheld the right of Congress to regulate the charge of any wharfinger. The most that can be said is that the decisions have held the question open. See, for example, *Transportation Co.* v. *Parkersburg*, 107 U. S. 691 (2 S. Ct. 732, 27 L. Ed. 584), where it is observed at page 701:

> "Now wharves, levees and landing places are essential to commerce by water no less than a navigable channel and a clear river but they are attached to the land; they are private property, real estate; and they are *primarily at least* subject to local state laws. Congress has never yet interposed to supervise their administration; it has hitherto left this exclusively to the states." (Italics supplied.)

It will be noted that the Court did not affirm the power of regulation by Congress.

On the contrary, several decisions of this Court affirmatively hold that the power of Congress and the states over the regulation of wharves is concurrent.

In *Cummings* v. *Chicago*, 188 U. S. 410, 23 S. Ct. 472, 47 L. Ed. 525, it was held that the jurisdiction of the federal government and the states in connection

with the granting of a wharf franchise was concurrent, that a wharf could not be built without the separate consent of the Secretary of War and of the City of Chicago.

In referring to that case, the Supreme Court, in *Montgomery* v. *Portland*, 190 U. S. 89 (23 S. Ct. 735, 47 L. Ed. 965), involving the same question, said, at 105:

> "In that case we recognized the doctrine as long established that the authority of a State over navigable waters entirely within its limits was plenary, subject only to such action as Congress may take in assumption of its power under the Constitution to regulate commerce among the several States. After referring to *Lake Shore & Michigan Railway* v. *Ohio*, 165 U. S. 365, 366, 368, (1896), we said that if Congress had intended by its legislation, prior to that decision, to assert the power to take under national control, for every purpose, and to the fullest possible extent, the erection of structures in the navigable waters of the United States that were wholly within the limits of the respective States, and to supersede entirely the authority which the States, in the absence of any action by Congress, have in such matters, such a radical departure from the previous policy of the Government would have been manifested by clear and explicit language. In the absence of such language it should not be assumed that any such departure was intended. We do not overlook the long-settled principle that

the power of Congress to regulate commerce among States is complete in itself, may be exercised to its utmost extent and acknowledges no limitations other than are prescribed in the Constitution'. *Gibbons* v. *Ogden*, 9 Wheat. 1, 196; *Brown* v. *Maryland*, 12 Wheat. 419, 446; *Brown* v. *Houston*, 114 U. S. 630. But we will not at this time make any declaration of opinion as to the full scope of this power or as to the extent to which Congress may go in the matter of erection, or authorizing the erection of docks and like structures in navigable waters that are entirely within the territorial limits of the several States. Whether Congress may, against or without the expressed will of the States, give affirmative authority to private parties to erect structures in such waters, it is not necessary in this case to decide. It is only necessary to say that the act of 1899 does not manifest the purpose of Congress to go to that extent under the power to regulate foreign and interstate commerce and thereby to supersede the original authority of the States. The effect of that act, reasonably interpreted, is to make the erection of a structure in a navigable river, within the limit of a State, dependent upon the concurrent or joint assent of both the national Government and the State Government. The Secretary of War, acting under the authority conferred by Congress, may assent to the erection by private parties of such a structure. Without such assent the structure cannot be erected by them. But under existing legislation they must, before proceeding under such author-

ity, also obtain the assent of the State acting by its constituted agencies."

See also, *Willamette Bridge Co. v. Hatch*, 125 U. S. 1, 8 S. Ct. 811, 31 L. Ed. 629.

Similar is *North Shore Boom Co. v. Nicomen Boom Co.*, 212 U. S. 406, 29 S. Ct. 355, 53 L. Ed. 574, which involved the question as to which of two firms could build a lumber boom on a navigable stream at approximately the same location. Had both been built navigation would have been virtually impossible. Both had the approval of the Secretary of War. The state court held the defendant had not complied with state law, and was disqualified. The Supreme Court upheld this conclusion, and on the following grounds (page 412):

> "The river in question is a navigable stream, entirely within the State of Washington, and, in the absence of any statute by Congress, a State has plenary power in regard to such waters. Obstructions in those waters may be offenses against the laws of the State, but constitute no offense against the United States in the absence of a statute . . . Where there is a Federal law which it is claimed also applies to the subject and requires the consent of the Federal Government, then, there is a concurrent or joint jurisdiction of the state and National governments over the erection of a structure which obstructs navigation."

It is a far cry from a recognition of concurrent authority to the conclusion that one of the agents is subject to the other with respect to the same subject matter.

Insofar as regulation is concerned, there is a real distinction between a facility which is affixed to realty and which is, consequently, essentially local, and a locomotive or freight cars which may be within one state at a given moment and in another state within a few hours or a day. It is quite understandable that the powers of Congress should extend to the regulation of the latter type of transportation facility, and that in the former the power of the state should be recognized to be supreme. It may be admitted similarly that Congress might have the power to correct obstructions on the free flow of interstate commerce, as well as to prevent burdens upon it, but that is not to admit that the power inheres to any greater extent.

It should be emphasized that the foregoing authorities are concerned with a suggested conflict between the regulatory powers of the state and the regulatory powers of Congress as applied to the activities of a private individual.

As we have said, the matter of regulation of wharves falls within the twilight zone wherein the regulatory powers of the states and Congress come together. As to activities within this zone, is it not a tenable conclusion that Congress' power over the activities of an individual would not extend to those same activities if carried on by a state?

It is undeniable that the state's power to perform an act itself is subject to less doubt and not so susceptible

of attack than when it seeks to control the operations of a private person performing a similar act.

For example, the State of California is in the insurance business through its State Compensation Fund, writing workmen's compensation insurance. It may, if it desires, write that insurance at cost, making no profit from the business. Its power in this question cannot be questioned. On the other hand, it could not compel a private insurer to issue policies on that basis.

The point is that the state's power in performing an act is much greater than its power to regulate the performance of a similar act by others. And so, if we should concede for the purpose of argument that if the regulatory powers of the states and Congress over an individual operating wharves should come into conflict, the federal power would be called the superior, different considerations apply with regard to congressional control of the state itself performing the act attempted to be regulated.

The fact that the operation of wharves is a function of government seems of the utmost importance to counsel, notwithstanding the Court in the California case felt that it had no relevance to the facts then before it. To us it would seem that Congress' power to control a state activity would be much less clear if that activity were one traditionally carried on by the states and recognized as a prerogative of sovereignty from the days of the common law.

That the operation of a wharf is a governmental function as distinguished from a proprietary one cannot be doubted.

In the first place, practically all wharves are located waterward of the line of ordinary high tide and, consequently, rest upon tide and submerged lands which belong to the states by virtue of their sovereignty.

Shiveley v. *Bowlby*, 152 U. S. 1, 14 S. Ct. 548, 38 L. Ed. 341;

Borax Consolidated v. *Los Angeles*, 296 U. S. 10, 56 S. Ct. 23, 80 L. Ed. 9.

In particular, the lands upon which rest the facilities operated by the Board of Port Commissioners are tidelands granted to the City by the State of California by Statutes of California, 1911, p. 1254, Statutes of California, 1911, p. 1258 and other supplementary acts. The City holds these tidelands subject to a public trust as to the conditions of which the language in the last cited statute is typical, reading in part as follows:

> "Said lands shall be used by said City and its successors only for the establishment, improvement and conduct of a harbor and for the construction, maintenance and operation thereon of wharves, docks, piers, slips, quays and other utilities, structures and appliances necessary or convenient for the promotion and accommodation of commerce and navigation, and said City, or its successors, shall not, at any time, grant, convey, give or alien said lands, or any part thereof, to any individual, firm or corporation for any purposes whatever . . ."

The prohibition against alienation serves to illustrate the public concern that the State of California has in its harbors, for this interdict was surplusage. The Constitution of California, Article XV, Section 3, forbids the alienation of such lands into private ownership.

The idea that the operation of a wharf was a governmental function, one of special concern to the sovereign, goes back to the days of common law. In *De Portibus Maribus* (Hargrave's Law Tracts, p. 51), Lord Chief Justice Hale summarized:

> "Upon all these considerations it is evident that the king hath a special concern and interest in the franchise of a common port, and consequently from hence it is evident,
>
> "(1st) That no subject may institute or erect a common port without the charter of the king or a lawful prescription; and if he doth, the liberty or pretended liberty is seizable in *quo warranto* . . . ."

And, further, at page 73 of the same treatise, the Lord Chief Justice states:

> "The ownership of propriety is, where the king or a common person by charter or prescription is the owner of the soil of a creek or haven where ships may safely arrive and come to shore. This interest of propriety may, as has been shown, belong to the subject. But he hath not thereby the franchise of a port; neither can he so use or employ it, unless he hath had that liberty time out of mind or by the king's charter. Indeed, he may

bring thither for his own private use his own boats and vessels to carry off and bring in his own goods that are not customable, as fish, etc., but he may not use it as a public port or admit foreigners unless in case of necessity nor take toll anchorage there . . .

The principle is stated differently in *Talcott* v. *Pine Grove, supra*, the Court using this language:

. . "For all time the setting up of a highway or ferry for conveying persons and property has been deemed, in the common law, a franchise, a matter of governmental concern, a part of the subjects in the immediate possession of the political power, and, to exercise which, demanded a release of this right from the sovereign, by special grant or charter . . . The right to set up a ferry or a road, and the taking of tolls is one of them, and in this the public has an interest . . . It is said that, 'a franchise is a branch of the royal prerogative in the hands of the subject' such as the right of taking tolls for a bridge, way or wharf . . . A long list of state and federal judgments . . . show, beyond doubt, that these rights are held by the grantee as the agent and trustee of the political power; that they are in no sense private, but continue after, as well as before, the grant, to be but a portion of the public government . . .

"And it is not true, we submit, that it is in degree only, that these franchises differ in their relations to the public from mills and inns . . . The one is private property; *the other is a political function, which, when resting in the hands of*

> *the government where originally it resided*, or delegated still for the same public use, to either persons or corporations, ever has been, and of right may be, aided by taxation. Whether in the immediate possession of the sovereignty, or placed in legal organizations controlled by public law for the purpose, it is equally controlled by, and the political power has a voice in, its most minute regulation." (Italics supplied.)

In *Commissioner* v. *Ten Eyck*, 76 Fed. 2nd 515, the Circuit Court of Appeals for the Second Circuit reviewed the nature and character of port establishments throughout the world, both as of the present day and historically. In speaking of their current operation in Europe, it said:

> ". . . There the operations are not regarded as a proprietary or profit making activity of the Government, and where ports are under the supervision of Port Committees, operated usually at a loss, or, at best, earning only sufficient operating revenue to meet the cost thereof, and where the Committee, as such, controls and regulates the dock facilities and provides for warehouses, ferries and quays, the facilities are regarded as being under governmental control operated as a usual function of government . . . "

The Court thereafter considered the organization of ports of the United States and concluded with this language:

> "Therefore it is clear that the ownership, control and operation of port facilities are essentially usually prerogatives of sovereignties; espe-

> cially of the sovereignty of the constituent state Governments of the United States."

Consider the strong statement of the Supreme Court of the State of California in *Board of Port Commissioners* v. *Williams*, 9 Cal. 2d 381 (70 Pac. 2d 918), where it is said, at page 390:

> "It should be kept in mind at every step in the consideration of this proceeding that it is the paramount duty of government zealously to guard the public interest unhampered by private contracts which may hinder its control of or impair the full beneficial use of its harbor, ports, waterways and tide lands which are held in trust for the promotion and improvement of navigation and commerce."

The Circuit Court of Appeals for the Ninth Circuit has applied the principle in *Juneau Ferry & Nav. Co.* v. *Morgan*, 236 Fed. 204, and *Femmer* v. *City of Juneau*, 97 Fed. 2d 649. In the first case cited the Court held invalid a municipal lease of a wharf to the navigation company on the ground that it was the governmental duty of the city officials to operate the wharf directly and not to surrender it into private operation. The second case reaffirmed this principle but held valid an agreement which gave the navigation company merely a prior right to use the wharf, the city retaining control thereof, and having sufficient facilities left for the use of the general public.

To the same effect are *Kelly* v. *Selectmen of Fair-*

haven, 295 Mass. 113, 3 N. E. 2nd 241; *Cape Cod S. S. Co.* v. *Selectmen of Provincetown*, 295 Mass. 65, 3 N. E. 2nd 244; *State* v. *Coffeyville*, 127 Kan. 663, 274 Pac. 258; and *City of Daytona Beach* v. *Dygert*, 146 Fla. 352, 1 So. 2nd 170.

Considering, therefore, that the operation of wharves is a function of government, and considering further the important fact that these wharves are operated on land which the state owns by virtue of its sovereignty and in trust for purposes of commerce and navigation, it would follow that the state has a legislative, a sovereign discretion in such operation. In its very nature it must be unrestricted and uncontrolled except, perhaps, with respect to discriminations against, or burdens upon, interstate commerce. How, with any degree of logic, may it be conceded that the state as a sovereign may operate a wharf, admittedly upon lands which it owns as a sovereign, and yet recognize in Congress the right to regulate and prescribe the state's actions in carrying out those operations?

While in the foregoing discussion we have largely confined ourselves to a discussion of the power of the state in connection with the operation of wharves, the same observations and conclusions apply to a city engaged in a like activity. In its relation to the federal government the municipal corporation is the state. In *McQuillin on Municipal Corporations*, 2nd Ed., Section 343, it is said that it is "the settled doctrine" that "the city is to be regarded at all times as a mere creature and agent of the state."

Later in the same section the author states that "every act performed by" a municipal officer "as such officer is the act of the state."

The result is, therefore, that if Congress has no power to regulate the state in its operations of wharves, there is a similar lack of power as to any municipality to which the state has delegated this governmental function.

It is therefore respectfully submitted that the decision in *United States* v. *California*, *supra*, has no application to the facts now under consideration, and that Congress has no power to authorize the defendant Commission, or any other federal agency, to interfere with the operations of a state or one of its agencies on publicly owned wharves.

Point B. Congress Did Not Intend to Empower the Maritime Commission to Regulate State Agencies in the Operation of Wharves.

The precise point to be considered in this subdivision of the brief is whether or not Congress has included or intended to include a state or a state agency within the definition of the word "person" as used in the Shipping Act, 1916. (46 U. S. C. Secs. 801-842.)

It is the conviction of this Appellant that public bodies are not included within that definition because they are not mentioned therein.

The preliminary section of the Shipping Act, which contains the definition, reads in its pertinent part as follows:

> "The term 'other persons subject to this act' means any person not included in the term 'common carrier by water' carrying on the business of forwarding or furnishing wharfage, dock, warehouse or other terminal facilities in connection with a common carrier by water."

Again, we are not unmindful of the fact that the Supreme Court in *United States v. California, supra*, held that the state was within the operation of the federal Safety Appliance Act. Again we urge that decision is not controlling in the instant case. Each statute must be measured by its own length, regarded in the light of its background and legislative history, and in view of the evils Congress was trying to correct.

Thus, in *Ohio* v. *Helvering*, *supra*, the Court said:

> "Whether the word 'person' or 'corporation' includes a state or the United States depends upon the connection in which the word is found."

In considering whether or not a state was included within the definition of the word "person" under another statute, this Court recently said there was no hard and fast rule that governed.

> "The purpose, subject matter, the context, the legislative history, and the executive interpretation of the statute are aids to construction which may indicate an intent, by use of the term, to bring state or nation within the scope of the law."
>
> *Georgia* v. *Evans*, 316 U. S. 159; 62 S. Ct. 972, 974; 86 L. Ed. 667.

Likewise, in *United States* v. *Cooper Corp.*, 312 U. S. 600, 604; 61 S. Ct. 742; 85 L. Ed. 1071, the Court held the United States was not a person within the meaning of the Sherman Act, entitled to sue for treble damages, saying:

> "Since, in common usage, the term 'person' does not include the sovereign, statutes imploying the phrase are ordinarily construed to exclude it. But there is no hard and fast rule of exclusion. The purpose, the subject matter, the context, the legislative history and the executive interpretation of the statute are aids to construction which may indicate an intent, by use of the term, to bring state or nation within the scope of the law."

It will be noted that in both of these cases, the phrase, "state or nation" is used, which negatives any contention that this rule of construction applies only to the enacting sovereign.

It is true that there is language in certain of the cases which so limits the rule, but the true rule is that it extends to any public agency or officer.

In *Balthaser* v. *Pacific Elec. Ry. Co.*, 187 Cal. 302, 305-6, 202 Pac. 37, 19 A. L. R. 452, that is made clear.

> "It must be conceded that the language of the Motor Vehicle Act in fixing speed limits, and regulating the use of public streets, is broad enough to apply to a motor fire-truck responding to a fire-alarm. But a familiar and fundamental rule of construction requires that this general language shall not be construed to apply to the government or its agencies unless expressly included by name. The general rule is stated by Blackstone as follows: 'I shall only further remark, that the King is not bound by any act of parliament unless he be named therein by special and particular words. The most general words that can be devised (any person or persons, bodies politic or corporate, etc.) affect him not in the least, if they may tend to restrain or diminish any of his rights or interests.' (Blackstone's Commentaries, Book 1, p. 261.)
>
> "Chancellor Kent states the rule as follows: 'It is likewise a general rule, in the interpretation of statutes limiting rights and interests, not to construe them to embrace the sovereign power or

government, unless the same be expressly named therein, or intended by necessary implication. (Kent's Commentaries, p. 460.)

"Associate Justice Story of the supreme court of the United States, sitting in the first circuit in the case of United States v. Samuel Hoar, 2 Mason 311, stated the rule as follows:

"'Now, I think, it may be laid down as a safe proposition, that no statute of limitations has been held to apply to actions brought by the Crown, unless there has been an express provision including it. For it is said, that, where a statute is general, and thereby any prerogative, right, title, or interest is divested or taken from the king, in such case the king shall not be bound, unless the statute is made by express words to extend to him . . . And though this is sometimes called a prerogative right, it is in fact nothing more than a reservation or exception, introduced for the public benefit, and equally applicable to all governments . . .

"'But, independently of any doctrine founded on the notion of prerogative, the same construction of statutes of this sort ought to prevail, founded upon the legislative intention. Where the government is not expressly or by necessary implication included, it ought to be clear from the nature of the mischiefs to be redressed, or the language used, that the government itself was in contemplation of the legislature, before a court of law would be authorized to put such an interpretation upon any statute. In general, acts of the legislature are meant to regulate and direct the

> acts and rights of citizens; and in most cases the reasoning applicable to them applies with very different, and often contrary force to the government itself. It appears to me, therefore, to be a safe rule founded in the principles of the common law, that the general words of a statute ought not to include the government, or affect its rights, unless that construction be clear and indisputable upon the text of the act . . . ' "

In *United States* v. *California*, *supra*, at 186, the Supreme Court said:

> "Respondent invokes the canon of construction that a sovereign is presumptively not intended to be bound by its own statute unless named in it . . . This rule has its historical basis in the English doctrine that the crown is unaffected by acts of Parliament not specifically directed against it . . . The presumption is an aid to consistent construction of statutes of the enacting sovereign when their purpose is in doubt but it does not require that the aim of a statute fairly to be inferred be disregarded because not explicitly stated . . . "

The Safety Appliance Act, 45 U. S. C., Secs. 1 *et seq.*, does not contain any definition such as that above quoted from the Shipping Act. Its language is of the broadest.

It was not concerned with the meaning of the word "person".

Section 6 provides:

> "Any common carrier engaged in interstate commerce by railroad . . . shall be liable . . . "

And Section 8 enacts that:

> "The preceding provisions and requirements of this chapter shall be held to apply to common carriers by railroad in the territories and the District of Columbia and shall apply in *all* cases . . . "(Italics supplied.)

On the other hand, the definition of "other person" in the Shipping Act is restrictive. After defining "other person" the act immediately proceeds to say what is meant by the word "person".

> "The term 'person' includes *corporations, partnerships and associations*, existing under or authorized by the laws of the United States, or any state, territory or District or possession thereof or any foreign country." (Italics supplied.)

The word "corporation" certainly does not include a state. In ordinary understanding it does not include a municipal corporation, and any extraordinary meaning is prohibited by the collocation of the word "partnerships" and "associations" which, by definition, are private business organizations. The rule of *ejusdem generis* applies.

It would be absurd to regulate a municipal corporation and not include other subordinate boards, agencies and districts of a state which obviously are not comprehended in the word "corporations" or in any other

definition of the word "persons" given in the Shipping Act.

In discussing the contention that a municipal corporation should be included in the meaning of the word "corporation", it is said in *McQuillin on Municipal Corporations*, 2nd Ed., Sec. 106, quoting in part from *Nashville v. Ray*, 19 Wall. 468 (22 L. Ed. 164) at 475:

> "It hardly need be said that this view has never been favored by the law nor has it influenced judicial decisions. Early the Supreme Court took the position that the city is a public institution created for public purposes only and hence has none of the peculiar qualities characteristics of a trading company instituted for the purposes of private gain, except, of course, that of acting in a corporate capacity. With emphasis this tribunal says: 'Its objects, its responsibilities and its powers are different.' Private corporations are the private property of the corporators. They are designed to regulate the private interests and exist only for private gain. The object of the city or town is governmental, not commercial. It is 'organized not to make money but to spend it'. 'Private gain, trading, speculation or the derivation of pecuniary profits are not the purposes or objects within the contemplation of the charter; and no powers are conferred to stimulate, encourage or advance such purposes further than the incidental encouragement and advancement which may follow a prudent exercise of the powers of local government'."

The statements in *United States* v. *California*, above noted, where the statute under consideration was said to be "all-embracing" do not apply in such situation. The Shipping Act is not "all-embracing". It is primarily a regulation of carriers by water. Such regulation of wharfingers as may be effected by it is purely incidental to the larger purpose. And, as will be demonstrated, even that incidental regulation is severely restricted.

Therefore, the ordinary rule of construction is proper as recognized in *Guarantee Co.* v. *Title Guaranty Co.*, 224 U. S. 152; 32 S. Ct. 457, 56 L. Ed. 706, approving *United States* v. *Herron*, 20 Wall. 251, 255, 22 L. Ed. 275, where it is said:

> " . . . The sovereign authority of the country is not bound by words of a statute unless named therein, if the statute tends to restrain or diminish the powers, rights or interests of the sovereign", calling this the "settled rule".

Now there is a real reason for not intending to include public bodies within the scope of a statute prohibiting discrimination and requiring the assessment of reasonable rates.

State and local public officials charged with administering wharf facilities are required as a matter of fundamental local law not to discriminate and to charge no more than reasonable rates.

Consequently, there was no reason for Congress to include such public bodies. They were already under the

restrictions Congress was now imposing upon private enterprise.

Another most unusual result will obtain if we conclude that Congress meant to bring municipalities within the meaning of the word "person". Witness Section 32 of the Shipping Act, 1916, which reads as follows:

> "That whoever violates any provision of this Act, except where a different penalty is provided, shall be guilty of a misdemeanor, punishable by a fine not to exceed $5,000."

If the word "person" means the City of Oakland, among others, then this Appellant has been guilty of a continuing misdemeanor since the enactment of the Shipping Act, in failing to file with the Shipping Board, and its successors, the lease entered into with Howard Terminal in 1914. The Commission, in the order under attack, has concluded that that lease is of the type of agreement contemplated by Section 15 of the Act which must be filed with and approved by the Commission.

Thus we are faced with the spectacle of a municipal corporation being guilty of a crime because of the performance of an act regarded as lawful for nearly a quarter of a century.

An examination of the legislative history of the Shipping Act, 1916, throws considerable light upon the purposes Congress meant to achieve, the evils it wanted to remedy, in enacting that legislation.

The United States Merchant Marine had fallen into a sorry state; practically all of the nation's foreign commerce had been carried on foreign bottoms; and domestic shipping had been strangled by railroad competition. The advent of the first World War and its preliminary foreshadows brought home to the nation this realization.

An investigation was begun in the House of Representatives pursuant to a resolution introduced in the 62nd Congress on February 24, 1912, authorizing the House Committee on the Merchant Marine and Fisheries to report to the House on the subject after thorough study. That report became H. R. Document No. 805, 63rd Congress, Second Session. In its prefatory note, the report recites the beginning of the investigation and goes on to say:

> " . . . But it was later deemed expedient to broaden the scope of this resolution so as to extend the investigating powers of the Committee to every possible transportation agency (such as forwarding, dock, terminal and all other companies and firms) which might be connected in any way with foreign or domestic water carriers, or with railroads, and a knowledge of which might be essential in ascertaining the full relationship between the navigation companies themselves as well as between such companies and the railroads . . . "

It is interesting to note that the only references in the report relative to terminal facilities concern railroad control of them.

For example, on page 323 of the report it is said:

> "But even if independent carriers could manage to overcome all other obstacles, the railroads are still in a position to effectively control independent water carriers by refusing to give them the benefit of their dock facilities at Buffalo both for the discharging and receiving of cargo, the independent carriers thus being required, in addition to the other disadvantages already enumerated, to unload at some other dock and team the goods to or from the railroad station. To make the situation worse, the railroads have secured nearly all the water frontage in Buffalo available for dock purposes . . . ."

The report thereafter summarizes the devices then existing for control of competition and lists among other things the following (at pp. 409, 410, 411 and 412, respectively):

> "(9) Railroad or steamship company ownership of exclusive terminal facilities . . .
>
> "(17) A railroad or its controlled water line or terminal company holds all the available docks and shed and piers and refuses access to an independent line . . .
>
> "(18) A railroad or its controlled water line owns the available water frontage which it refuses to utilize, at the same time refusing to release the same by sale or otherwise . . .
>
> "(25) Railroads can give access to docks to preferred water lines with which they have special arrangements, thus forcing shippers by other

water lines to pay a series of charges for switching, docking and unloading, and putting them to much inconvenience. In effect it means that the shipper who wishes proper service must use the water line preferred by the railroad."

The only recommendation of the Committee with respect to terminal facilities is found on page 424 of the report where it is said:

"(10) That railroads be required to make their terminal facilities available to water carriers on equal terms and under such reasonable conditions as the Interstate Commerce Commission may prescribe. The Committee also believes that the Federal Government should pursue a policy of not expending money in the interest of any port for harbor or channel improvements, unless that port has sufficient dock facilities available to all water crariers."

It will thus be seen that the problem Congress was considering did not in any way extend to publicly owned and operated terminal facilities, nor, indeed, to privately owned wharves, which were operated as public utilities and open to all alike. From this report grew the legislation that became the Shipping Act, 1916.

Since the enactment of the Shipping Act, Congress consistently has indicated that it did not believe it had attempted to regulate public agencies. Striking evidence of that belief is afforded three years after the enactment of the Shipping Act. Chapter 95 of the 65th Congress,

Third Session, (40 Stats. at L. 1286) provides as follows:

> "It is hereby declared to be the policy of the Congress that water terminals are essential at all cities and towns located upon harbors on navigable waterways and that at least one public terminal should exist, constructed, owned, and *regulated* by the municipality or other public agency of the state and open to the use of all on equal terms . . . ." (Italics supplied.)

It is submitted that the use of the italicized word "regulated" in that statute cannot be construed consistently with any understanding on the part of Congress that it had already subjected wharves operated by municipalities or other public agencies of the state to regulation by the Shipping Board.

That the use of the word "regulated" was not inadvertent, as demonstrated by the following language of Section 8 of the Merchant Marine Act of 1920, where it is said:

> "And it shall be the duty of the board in cooperation with the secretary of war, with the object of promoting, encouraging and developing ports and transportation facilities *in connection with water commerce over which it has jurisdiction* . . . . to investigate the subject of water terminals including the necessary docks, warehouses, apparatus, equipment and appliances in connection therewith, with a view to devising and *suggesting* the types most appropriate . . . . *to*

> *advise with communities* regarding the appropriate location and plan of construction of wharves, piers and water terminals . . . " (Italics supplied.)

In the first place, it will be noted that the phrase "over which it has jurisdiction" does not limit the phrase "ports and transportation facilities" but relates to "water commerce". The connotation is definite that Congress was not asserting any jurisdiction over wharves, either in itself or in its subordinate, the Shipping Board. Secondly, the use of the words "suggesting" and "advise what communities" is certainly not the language of a master speaking to a subordinate, but is, rather, that to be expected between equals dealing on a basis of comity. Every inference that can be drawn from this statute leads to the conclusion that Congress did not understand that it had in any way attempted to regulate the state or local communities who were providing wharf facilities for the public good.

Resort to statutes *in pari materia* is often helpful in discovering what the legislature had in mind in using a certain phrase. The Shipping Act, 1916, has often been held to be *in pari materia* with the Interstate Commerce Act, 24 Stat. at L. 379.

Part III was added to the Interstate Commerce Act by the Transportation Act of 1940. Part III deals with the regulation of water carriers in domestic commerce, and transferred jurisdiction over them from the Maritime Commission to the Interstate Commerce Commission.

The part had its inception in S. 1632, introduced in 1935. In its original form the bill provided for the regulation of both water carriers and wharfingers. The wharfinger provisions were eliminated and the bill was introduced in the succeeding session as S. 1400 and subsequently became Part III of the Transportation Act of 1940.

In its original form S. 1632 defined the term "person" as follows:

> "The term 'person' includes any individual, firm, copartnership, corporation, company, association, joint stock company *or body politic.*" (Italics supplied.)

The italicized words were amended out of the bill, and no other assumption is possible than that this deletion was deliberate. Certainly, the framers of the original draft did not believe that the word "person" would include a body politic unless the latter were expressly designated. Just as certainly it must have been the opinion of Congress that by eliminating the italicized words the operation of the states and their political subdivisions were not covered by the bill.

The conclusion is further strengthened by the fact that the very same Transportation Act of 1940 that contains Section 302 (which is the section defining "person") amended Section 13 of Part I of the Interstate Commerce Act. Its pertinent language reads thusly:

> "That any person, firm, corporation, company or association or any mercantile, agricultural or

> manufacturing society or other organization *or any body politic or municipal organization*"

may file a petition with the Commission. (Italics supplied.)

Certainly, Congress did not think public bodies were included within the meaning of "person" or "corporation" in connection with Section 13. If it had, there was no reason for retaining the italicized words when the section was amended. It is not reasonable to presume a different concept in connection with Section 302.

Under date of January 21, 1936 the Interstate Commerce Commission transmitted to the President and the Congress the Fourth Report of the Coordinator of Transportation (House Document No. 394, 74th Congress). The Coordinator said, in part:

> "The only certain means of correcting these conditions is federal regulation and such regulation is in reality a logical and essential part of federal regulation of water carriage in general. It was for this reason that the provisions for the regulation of 'wharfingers' were included in the original draft of S. 1632 at the last session of Congress. The same purpose can be served, however, by the separate bill now recommended."

Thereafter, the report stated as follows:

> "The separate bill now recommended for the regulation of 'wharfingers' is being prepared after numerous conferences with interested parties. As in the case of the water carrier bill now before the

Senate, the intent is to meet all serious objections which can be met without the sacrifice of principle. The bill will be ready for presentation at an early date."

Thereafter, under date of March 26, 1936, the Coordinator issued a press release stating in part:

"It is also quite generally agreed that legislation for the regulation of wharfingers should be contingent upon legislation for the adequate regulation of water carriers, and it still remains for Congress to act upon the latter legislation. In the circumstances, the Coordinator is of the opinion that nothing would be gained by attempting to press the issue of wharfinger regulation at the present session, and will be governed accordingly."

It is evident from the foregoing excerpts that the Coordinator in 1936 was of the opinion that there was then on the statutes no measure for the regulation of wharfingers.

We do not mean to suggest that the Court is bound by the interpretation of the Federal Coordinator nor by the opinion of port operators or the understanding of the members of the Maritime Commissions' predecessor boards; but these things are pertinent in arriving at the intent of Congress if, upon the reading of the sections of the Shipping Act involved, that intent seems ambiguous.

The general policy with respect to congressional interference with municipal activities also should be considered.

In statutes such as the Wagner Act, 49 Stats. at L. 449, the Social Security Act, 49 Stats. at L. 220, the Wages and Hours Act, 59 Stats. at L. 1069, and other statutes of like character, specifically provide that they shall not apply to public agencies.

On the other hand, when Congress has meant to include a state or municipal corporation within the scope of a statute, it has generally clearly so indicated. For example, we find the following:

> "States . . . and municipal subdivision thereof." (50 U. S. C. 124.)
>
> "Any state . . . or political subdivision thereof." (7 U. S. C. 702 dd.)
>
> "Any state, municipality, corporation, firm, district or individual." (48 U. S. C. 395.)

These factors sufficiently demonstrate that the City of Oakland is not an "other person" amenable to the jurisdiction of the Maritime Commission.

But other considerations lead to the same conclusion. We have pointed out that the officials charged with the enforcement of the Shipping Act, 1916, made no effort to regulate the rates of any wharfinger, let alone a public body, under the provisions of that statute.

The rule that contemporaneous construction is always the best is so well known as not to require the discussion of authorities. See, for example, *Louisville & N. R. Co.* v. *United States*, 282 U. S. 740, 51 S. Ct. 297, 75 L. Ed. 672; *Pocket Veto Case*, 279 U. S. 655, 49 S.

Ct. 463, 73 L. Ed. 894; and *Boston & M. R. Co.* v. *Hooker*, 233 U. S. 97, 34 S. Ct. 526, 58 L. Ed. 868.

Reverting once more to a discussion of *United States* v. *California*, *supra*, there are certain other differentiating factors.

We have pointed out that a wharf is primarily local, whereas a railroad is essentially national, its apparatus being easily transportable from state to state.

In addition to that, railroads from their earliest days have been conceded to be objects of federal regulation, even as respects intimate details of their intrastate operations because of the effect upon interstate commerce.

On the other hand, until the Maritime Commission first asserted jurisdiction no one has conceived that Congress ever attempted to regulate wharves to any extent.

Furthermore, in the case of railroads, the great preponderance of track mileage is privately owned and operated, and that which is controlled by the public is infinitesimal in comparison. Contrariwise, in the case of wharves, the great majority of them are operated by the states or by their agencies, compared with the much smaller number which are under private control.

Bearing these factors in mind, it is perfectly consistent to hold that in enacting a general statute governing safety appliances on railroad equipment, Congress intended to comprehend equpiment that was operated

and owned by a state or one of its subdivisions, while, at the same time, believing that Congress did not intend to subject a state agency operating wharves to a general statute without specifically mentioning the state or its agency. The circumstances to which each particular statute applies must be considered if we are to discover the true congressional intent.

Under the circumstances, and because of the considerations enumerated, it is respectfully submitted that Congress did not intend to subject a state or municipal corporation to the jurisdiction of the Maritime Commission or its predecessors in enacting the Shipping Act, 1916.

Point C. The Maritime Commission Has No Jurisdiction Over the Rates of Any Wharfinger.

Independently of any question of constitutional power on the part of Congress, and independently of whether or not Congress has included public bodies in the definition of the phrase "other person", the Maritime Commission has no jurisdiction over the rates, limited as such, of any wharfinger, whether *publicly* or *privately* owned.

It should be remembered that the Maritime Commission is one of limited jurisdiction and, like the Interstate Commerce Commission, its powers are strictly statutory.

New England Divisions Case, 261 U. S. 184; 43 S. Ct. 270; 67 L. Ed. 605.

The Commission in its final report and order makes it clear it realizes it has no general power to fix the rates of wharfingers. This cannot be emphasized too strongly.

But the Commission has tried to circumvent this restriction by denominating the assessment of complainant's wharf storage rates a "practice" and by calling them unduly prejudicial and preferential and unreasonable in violation of Sections 16 and 17 of the Shipping Act.

We have stated heretofore that whatever power the Shipping Act gave the Commission over wharfingers was fragmentary and purely incidental. An examination of the statute corroborates that statement. Of its original 44 sections, the phrase "other person" appears only in

Sections 15, 16, 17, 20 and 21. Section 15 has no relation to rates or practices, being concerned with agreements and will be discussed in a later section of this brief. Section 20, prohibiting the disclosure of confidential information, and Section 21, relating to records and the production of information, are not involved in this proceeding.

Section 16 reads as follows:

> "Section 16. That it shall be unlawful for any common carrier by water or other person subject to this act, either alone or in conjunction with any other person, directly or indirectly—
>
> "First. To make or give any undue or unreasonable preference or advantage to any person, locality or description of traffic in any respect whatsoever, or to subject any particular person, locality or description of traffic to any undue or unreasonable prejudice or disadvantage in any respect whatsoever.
>
> "Second. To allow any person to obtain transportation for property at less than the regular rates then established and enforced on the line of such carrier, by means of false billing, false classification, false weighing, false report of weight or by any other unjust or unfair device or means.
>
> "Third. To induce, persuade or otherwise influence any marine insurance company or underwriter or agent thereof not to give a competing carrier by water as favorable a rate of insurance on vessel or cargo having due regard to the class of vessel or cargo as is granted to such carrier or other person subject to this act."

There is no charge in the report and order of the Commission, nor any assertion on the record, that this Complainant has violated the second or third paragraphs of Section 16. Therefore, we are concerned only with the pargaraph numbered First.

Section 17 provides as follows:

> "That no common carrier by water in foreign commerce shall demand a charge or collect any rate, fare or charge which is unjustly discriminatory between shippers or ports or unjustly prejudicial to exporters of United States as compared with their foreign competitors. Whenever the board finds that any such rate, fare or charge is demanded, charged or collected it may alter the same to the extent necessary to correct such unjust discrimination or prejudice and make an order that the carrier shall discontinue demanding, charging or collecting any such unjustly discriminatory or prejudicial rate, fare or charge.
>
> "Every such carrier and every other person subject to this act shall establish, observe and enforce just and reasonable regulations and practices relating to or connected with the receiving, handling, storing or delivering of property. Whenever the board finds that any such regulation or practice is unjust or unreasonable, it may determine, prescribe and order enforced a just and reasonable regulation or practice."

The Court cannot fail to note the difference between the first and second paragraphs of Section 17. The first paragraph is limited to *common carriers by water in*

foreign commerce. The second paragraph refers to "every such carrier and every other person subject to this act".

Since the phrase "other person" appears in the second paragraph and does not appear in the first, all rules of construction, and common sense, tell us that the provisions of the first paragraph do not apply to such "other persons".

Note, also, that the first paragraph of that section deals with rates, fares and charges, whereas the second paragraph is concerned with regulations and practices. From this it must be concluded that Congress did not intend to regulate the rates of wharfingers in connection with foreign commerce and that it regarded a rate as something different from a practice, and did not include it within that term. Had there been any different intent there would have been no need to have divided the section into two paragraphs.

If any argument were needed to demonstrate that proposition, the act itself furnishes it in Section 18.

We must remember that Section 17 deals with the regulation of foreign commerce and Section 18 with interstate commerce.

Section 18 reads as follows:

> "Section 18. That every common carrier by water in interstate commerce shall establish, observe and enforce just and reasonable rates, fares, charges, classifications and tariffs and just and rea-

sonable regulations and practices relating thereto and to the issuance, form and substance of tickets, receipts, bills of lading and the matter of presenting, marking, packing and delivering property for transportation, the carrying of personal, sample and excess baggage, the facilities for transportation and all other matters relating to or connected with the receiving, handling, transporting, storing or delivering of such property.

"Every such carrier shall file with the board and keep open to public inspection, in the form and manner and within the time prescribed by the board, the maximum rates, fares and charges for or in connection with transportation between ports on its own route; and if a through route has been established the maximum rates, fares and charges for or in connection with transportation between points on its own route and points on the route of any other carrier by water.

"No such carrier shall demand, charge or collect a greater compensation for such transportation than the rates, fares and charges filed in compliance with this section except with the approval of the board and after ten days' public notice in the form and manner prescribed by the board, stating the increase proposed to be made; but the board for good cause may waive such notice.

"Whenever the board finds that any rate, fare, charge, classification, tariff, regulation or practice demanded, charged, collected, or observed by such carrier is unjust or unreasonable it may determine, prescribe and order enforced, a just and

reasonable maximum rate, fare or charge or a just and reasonable classification, regulation or practice."

For our purposes, the first paragraph alone of Section 18 will suffice.

In the first place, the Court will note that the phrase "other person" does not appear in the entire section. Secondly, it will be seen that Congress has combined the matter of rates, fares and charges, which appeared in the first paragraph of Section 17, with reasonable regulations and practices, which appeared in the second paragraph of that section. From this it is fairly to be inferred that Congress had a reason for dividing Section 17 into two paragraphs, and to treat the persons included in the second paragraph in a different manner from those included mentioned only in the first.

The design of Sections 17 and 18 and, indeed, the entire structure of the Shipping Act, show that Congress intended to treat it differently the various transportation agencies over which it assumed jurisdiction.

In the first place, carriers engaged in interstate commerce were in competition with railroad carriers engaged in that commerce. The railroads were subjected to a high degree of regulation by the Interstate Commerce Commission; and it was only fair that their competitors, the water carriers, should be subjected to like regulation by the water carrier administrative agency.

In the case of water carriers engaged in foreign commerce, there was, in the main, no such factor of competition. There was involved, also, the matter of international law and international comity and consequently one would expect to find carriers engaged in this service subjected to a lesser degree of regulation than were carriers engaged in interstate commerce. It would have been difficult, without international repercussion, to have fixed the rates of foreign carriers. All that Congress could insist, with any graceful regard for the rights and powers of foreign governments, would be that these foreign carriers treat American shippers on as fair a basis as they treated the shippers of their own nation. And, as Section 17 demonstrates, that is all that Congress tried to do.

The third transportation agency brought within the provisions of the act, being those included within the term "other person", was intended to be subjected to an even lesser degree of regulation than were the carriers in foreign commerce.

The Shipping Act, 1916, cannot be called comprehensive by any stretch of the imagination. Compared to the Interstate Commerce Act, it is shadowy and insubstantial. The regulations it imposes are only partial. For instance, there is no requirement that a certificate of convenience or necessity be obtained by any person before embarking in the business of carriage by water or, for that matter, for the erection or operation of a

public wharf. Nor, if a service is once established, may the carrier be compelled to continue.

McCormick Steamship Co. v. *U. S.* 16 Fed. Supp. 45.

The rates charged by foreign steamship lines are not controlled and the Government seems to concede that is also true of the rates as such of terminal operators.

Until the enactment of the Intercoastal Shipping Act, 1933, (47 Stat. 1425; 46 U. S. C. Sec. 843) there was no requirement that the carriers file their tariffs, that they should give notice of tariff changes and that they should not depart from the rates so fixed. The scope of regulation was increased somewhat by the enactment of the Merchant Marine Act of 1936 and it was not until 1938, with the enactment of the Act of June 23, 1938 (52 Stat. 964, 46 U. S. C. Sec. 845a) that the Commission had any power to fix minimum rates.

Therefore, it is most inaccurate to call the Shipping Act, 1916, as originally enacted, a comprehensive statute, and worse, to reason from that premise that Congress must have intended to include every activity of every person who was connected in any way with the shipping industry.

In connection with wharf storage rates, what the Commision has done, in effect, is to prescribe *minimum rates* to be observed at the terminals of San Francisco Bay. This it may not do.

It had no power to do so in connection with water carriers before the passage of the Act of June 23, 1938, above referred to, which amended the Intercoastal Shipping Act, 1933. The last named statute was amendatory of the Shipping Act, 1916.

The administrator of the Shipping Act, 1916, could not prescribe rates. That was left for the initiation of the carrier. Section 3 of the Intercoastal Shipping Act (46 U. S. C. Sec. 845) expressly provided, in its last sentence:

> "Nothing herein contained shall be construed to empower the board affirmatively to fix specific rates."

That provision was eliminated by Section 903d of the Merchant Marine Act, 1936 (49 Stat. 2016); but it served to throw light on the congressional philosophy underlying the Shipping Act and its amendatory statutes.

It was not until 1938, as we have seen, that the power to enforce minimum rate schedules as given to the Commission; and that power was restricted to carriers, and to only a certain limited class of carriers. There is not a word about "other persons".

It should be remembered that the Intercoastal Shipping Act applies only to water carriers in interstate commerce "by way of the Panama Canal". The Act of 1938 adds Sections 4 and 5 to that statute which reads as follows:

> "Sec. 4. Whenever the Commission finds that

any rate, fare, charge, classification, tariff, regulation, or practice demanded, charged, collected, or observed by any carrier subject to the provisions of this Act is unjust or unreasonable, it may determine, prescribe, and order enforced a just and reasonable maximum or minimum, or maximum and minimum rate, fare, or charge, or a just and reasonable classification, tariff, regulation or practice: *Provided*, That the minimum-rate provision of this section shall not apply to common carriers on the Great Lakes.

"Sec. 5. The provisions of this Act are extended and shall apply to every common carrier by water in interstate commerce, as defined in section 1 of the Shipping Act, 1916."

It will be observed these sections give the Commission no jurisdiction to fix minimum rates for carriers in foreign commerce or on the Great Lakes nor in the case of "other persons". This statute is the most recent expression of Congress in respect to the power of the Maritime Commission over rates. The failure to include "other persons" must be deemed deliberate. It is a reaffirmation of the policy of the Shipping Act, 1916, wherein, as we have shown, the sections granting authority over rates, Sections 17 and 18, exclude those of wharfingers. It shows that Congress in 1938 did not believe the Commission had any such existing power.

Now, with this background, let us examine the final report of the Commission and observe the means by which the Commission seeks to evade that policy.

Preliminarily, its efforts fall into two lines. First, it says, wharf storage is furnished below cost; the result is that users of other services of Appellant must do one of two things: (1) assume the burden of the loss so sustained, or (2) be denied hope of a downward revision. From this it is reasoned that these users of other services are being discriminated against, and that violence is done to sections 16 and 17 of the Shipping Act, 1916.

Secondly, the Commission says that what it really is trying to regulate is free time (which subject will be considered in a later part of this brief), and that if, after the expiration of free time, low wharf storage rates are permitted to apply, the regulation of free-time is thwarted *pro tanto*.

To illustrate, the following are excerpts from the report:

> "Wharf demurrage is the charge accruing on cargo left in possession of the terminal beyond the free time period. The question here is whether respondents are unduly discriminating between such cargo and that removed during the free time period. The principal evidence on this point is an analysis of the cost of providing wharf storage to determine whether that class of service is self-sustaining *or is furnished at rates so low as to cast a burden upon other services.*" (Italics supplied.) (R., p. 26.)
>
> "' . . . As will be demonstrated, the present rates as a whole produce revenues which are far

below the cost of the service as computed according to the Edwards-Differding formula. The general theory of this formula is that the responsibility of providing adequate revenues for essential terminal facilities rests upon the cargo and the carrier. The charge for each service is made to cover the direct cost incurred in rendering the service and some portion of the joint or overhead cost which are properly attributable to it." (R., p. 29.)

The Commission thereupon applies the so-called Edwards-Differding formula and concludes:

"The foregoing analysis of costs shows unmistakably that users of wharf storage service are not providing their proper share of essential terminal revenues. It must be apparent also that a disproportionate share of this burden is being shifted to users of other terminal services whose charges are based on rates considered to be reasonable in 1935." (R., p. 32.)

"The next question is whether granting storage at non-compensatory rates is unduly preferential and prejudicial in violation of section 16 of the Shipping Act, 1916, and an unreasonable practice in violation of section 17 thereof. The storage cases previously mentioned, 1 U. S. M. C. 676 and 2 U. S. M. C. 48, establish two propositions. First, the furnishing of free storage facilities beyond a reasonable period results in substantial inequality of service as between shippers. Clearly the furnishing of such facilities at non-compensatory rates is merely a less serious form

of the same offense. Second, any preferred treatment by charges or otherwise of certain classes of cargo results in a discrimination against other cargo." (R., p. 33.)

And, lastly, it is said:

"Oakland contends there can be no discrimination since the rates are open to all shippers alike. In a sense this is true. However, the commercial practices of those shippers who supply the major portion of tonnage handled by respondents obviously do not permit of their placing their goods in storage. Furthermore, it should not be overlooked that the practice of furnishing one service below cost has a tendency to prevent any downward revision of rates for other services however justified they may be. Clearly such a practice is unreasonable.

"The decisions cited are ample authority for condemning the existing wharf storage rates and practices as being in violation of sections 16 and 17 prohibiting undue prejudice and unreasonable practices." (R., p. 35.)

At this time let it be observed that while the hearing in Docket 555 attracted a widespread interest in the shipping, water carrier and water terminal industries, not one shipper testified in the proceeding on the subject of wharf storage rates. Not one representative of any steamship line testified in that regard.

That indicates that there was no very great concern on the part of either the shippers or the water carriers

as to the level of the existing wharf storage rates. It would seem to indicate that none of them felt themselves to be prejudiced or subjected to an unreasonable practice. The Court is well aware of the ever-present ability of shippers and of shippers' organizations to raise their voices high when they feel that a particular rate or practice is prejudicial to their interests.

What the Commission was concerned with at the hearing, and what its report plainly shows it was driving at, was a determination of whether or not the existing rates were *compensatory*. It was not worrying about any discrimination as between shippers or prejudice to certain of them. When it came to write its report and order it tried to find a legal means for doing something that Congress had not given it power to do, namely, to order the publishing of wharf storage rates on a basis which it believes to be *compensatory*. If the Commission can do this under guise, it may by similar subterfuge control every other rate of wharfingers and thus take upon itself powers Congress has not given it. This will be usurpation.

This point cannot be emphasized too strongly. To achieve its end, the Commission mouthed the words of this Court in *Baltimore & Ohio R. R. Co. v. United States*, 305 U. S. 507, 59 S. C. 284, 83 L. Ed. 318. The conclusions of law which it attempted to dress up as findings of fact, and so to preclude any effective review, are modelled carefully after the language of that case.

We concede the validity of that decision. We affirm the principles it announces. We deny its application, in any respect, to the facts disclosed by the record or, for that matter, by the report of the Commission itself.

The Baltimore & Ohio case was one involving two activities of railroad carriers condemned by the Interstate Commerce Commision in *Ex parte* 104, *Part VI, Warehousing and Storage of Property by Carriers at the Port of New York, N. Y.*, 198 I. C. C. 134; 216 I. C. C. 291 and 220 I. C. C. 102.

The first of these practices consisted in furnishing uptown warehouse space to certain large shippers, which service was not included in the carriers' tariff; and which was less than the rate charged other shippers for identical space. The essence of the Commission's decision is found in the 216 Volume at page 340, where the Commission says:

> "We find that the leasing of space to shippers for storage of the particular description of traffic here involved, *which results in said shippers paying a lower storage rate than is charged other shippers for space identical in all respects* constitutes a device whereby respondents engaged in unjustly discriminatory and unduly preferential practices forbidden by sections 2 and 3 of the act. The space here discussed is leased from respondents and used for storage which is a necessary and component part of the commercial activities in connection with the handling and distribution of flour. This storage is not a part

of transportation as defined in the act. The space therefore is not such as is properly the subject of tariff publication but must be governed by the principle announced in *Leases and Grants by Carrier to Shipper, supra;* Cf. *Wharfage Charges at Atlantic and Gulf Ports,* 157 I. C. C. 663, 691. Respondents by paying for or assuming the cost of such commercial service *depart from their published transportation rates and charges* in violation of section 6 of the act." (Italics supplied.)

It is not contended in the instant proceeding this Appellant or any other Respondent in Docket 555 did not publish its wharf storage rates in its tariff, or that it failed to observe the published rate. Therefore, this portion of the New York case has no cogency in the present proceeding.

The second practice complained of related to the charges on the storage-in-transit privilege afforded certain commodities, such as wood pulp and rubber. Storage-in-transit is the privilege of moving goods from one point to another under one bill of lading with storage for a certain maximum period permitted at some intermediate point. The freight charge assessed by the carrier is the same as if the movement had been continuous and did not, in fact, constitute two separate movements. The in-transit privileges in question were set up in the carriers' tariffs, but they were limited to these certain commodities with much higher rates for the same privilege being charged against other commodities.

The basis of the Commission's holding this charge

to be a violation of the Interstate Commerce Act is two-fold. In the decision last referred to, at page 341, it is discussed, and the Commission says:

> ". . . . Our discussion of those commodities herein is only illustrative as the record is clear that those and other commodities are stored under circumstances which are not bona fide transit arrangements necessarily related to transportation services which it is the duty of the respondents to perform. The circumstances and practices referred to are part of the business necessary in conducting a commercial warehouse enterprise. The engagement by the carriers in commercial warehousing under circumstances described of record affects the performance of their common carrier duties and is of such character as to result in the violation of the act which we are charged with administering . . . ."

And, continuing, at pages 341 and 342:

> "Goods, including rubber stored under the so-called transit tariff are loaded from shipside and moved to warehouses under local rates. The goods remain in storage under so-called 'expense bills'. If shipped outward outbound from storage within the transit period a refund is made of the local inbound freight rates since the same through rate applies from shipside as from the warehouse."

And further, at pages 342, 343:

> "In appendix III to the prior report the loss per ton on freight stored under the in transit tariffs by the trunk line respondents during the

year 1931 in the port of New York district is shown. The losses range from $1.28 to $6.18 per ton and then as now a large percentage of tonnage stored consisted of crude rubber. In most cases it is not contended on this record that the rates under in transit tariffs compensate the carriers for the cost of storage and handling. No pretense is made that the storage and handling rates on crude rubber and wood pulp are compensatory and one prominent witness for respondent when asked if he knew the *out of pocket loss incurred* in the storage and handling of crude rubber testified 'I know that those things do not in themselves pay for handling the traffic'. This witness in effect admitted that *the 'storage costs, without considering the handling costs, exceed the revenues derived from the two services.*" (Italics supplied.)

In other words, the Commission found that the carriers were, in effect, giving a concession to large shippers by performing a function not within their duties as a carrier by rail, and *furnishing this service at an out-of-pocket loss*, thereby casting a burden upon other customers of the carriers to whom this special service was not available.

There can be no question of the soundness of the decision of the Interstate Commerce Commission on the facts presented to it; nor of the decision of the Supreme Court in upholding the Commission.

That, however, does not give comfort to the Maritime Commission. We have shown that the first violation

charged the New York carriers does not exist in this case, and it is likewise true that the second does not.

In the first place, the operation of a public wharf has a two-fold aspect. The public wharfinger is not a carrier. As to certain of his functions he operates as the agent of the carrier, and as to certain others of his functions he operates as the agent of the shipper or consignee. Storage, as has been indicated by the decision of the Interstate Commerce Commission above referred to, is not part of transportation and, consequently, is not a transportation service. It is, nevertheless, one of the recognized functions of the public wharfinger. The second element shown to exist in connection with the second charge against the New York carriers was that the rates did not meet the out-of-pocket expense of the carriers.

The Court will note that there is not one word in the final report of the Commission or in its order which mentions out-of-pocket costs. There is not one iota of testimony, there is not a single exhibit which the Commission had before it when it decided this docket, as to what the out-of-pocket costs of handling wharf demurrage are.

This issue of out-of-pocket costs is determinative of this appeal.

Unless the fact is that Appellant does not meet its out-of-pocket expenses in connection with wharf storage, *no burden is thrown on users of other services.*

no discrimination is made to appear, and the house of cards built by the Commission tumbles.

At the outset, certain observations of Mr. Justice Brandeis in *Skinner & Eddy Corp. v. United States*, 249 U. S. 557, 63 L. Ed. 772, 39 S. Ct. 375, are helpful in considering the limits of authority of the Maritime Commission in issues such as those presented here. The opinion deals with the powers of the Interstate Commerce Commission, but we have seen that the act to regulate commerce is much broader in scope than the Shipping Act, 1916 and, consequently, the power of the Maritime Commission is considerably less than that which was enjoyed by the Interstate Commerce Commission at the time of the opinion in question. Beginning at page 404 the Justice wrote:

> "In construing this provision it is important to bear in mind the limits of the Commission's control over rates. Neither the Act to Regulate Commerce nor any amendment thereof has taken from the carriers the power which they originally possessed, to initiate rates: that is, the power, in the first instance, to fix rates or to increase or reduce them. Legislation of Congress confers now upon the Commission ample powers to prevent by direct action the exaction of excessively high rates. The original act, proceeding upon the common-law rule which prohibits carriers from charging more than reasonable rates, gave the Commission power to declare illegal one unduly high; but even after such a determination the Commission lacked the power to fix the rate which should be charged . . .

"Congress, however, steadfastly withheld from the Commission power to prevent by direct action the charging of unreasonably low rates. The common law did not recognize that the rate of a common carrier might be so low as to constitute a wrong; and Congress has declined to declare such a rule. Despite the original Act to Regulate Commerce and all amendments, railroads still have power to fix rates as low as they choose and to reduce rates when they choose. The Commission's power over them in this respect extends no further than to discourage the making of unduly low rates by applying deterrents. One such deterrent is found in the fact that low rates, because voluntarily established by the carrier, may be accepted by the Commission as evidence that other rates, actual or proposed, for comparable service are unreasonably high. . . . The voluntary making of unremuneratively low rates in important traffic may also tend to induce the Commission to resist appeals of carriers for general rate increases on the ground of financial necessities. But the main source of the Commission's influence to prevent excessively low rates lies in its power to prevent unjust discrimination . . . . The order prohibiting the unjust discrimination, however, leaves the carrier free to continue the lower rate; the compulsion being that if the low rate is retained, the rate applicable to the locality or article discriminated against must be reduced. That is, the carrier may remove discrimination either by raising the lower rate to the relative level of the higher, or by lowering the higher to the relative level of the

lower, or by equalizing conditions through fixing rates at some intermediate point."

The foregoing decision arose out of *Commodity Rates to Pacific Coast Terminals*, 32 I. C. C. 611. In its opinion, at page 622, the Commission said:

> "We are of the opinion that these carriers should be permitted to compete for this long distance traffic so long as it may be secured at rates which clearly cover the out-of-pocket cost . . . . Since the average ton-mile revenue of these carriers is approximately 9 mills on freight traffic, it is probable that a rate which produces 45 per cent as much as *the average pays more than the out-of-pocket cost and therefore does not impose a burden upon other traffic. None of the rates proposed appear, therefore, to be open to the charge that they pay less than out-of-pocket cost* . . . " (Italics supplied.)

The principle there applied by the Commission has been followed by it consistently. For example, see *Louisville & N. R. Coal & Coke Rates*, 26 I. C. C. 20, 27:

> "Anything above the out-of-pocket cost of handling is a contribution to general expenses, and to that extent tends to relieve rather than burden other traffic . . . "

The reason underlying the rule is set forth in *Boileau v. Pittsburgh & L. E. R. Co.*, 24 I. C. C. 129, 132, where it is said:

> " . . . It is a well established and generally recognized rule that if additional business can

be taken on at rates which will contribute at least a little in additional to the actual out-of-pocket expense, the carrier will be advantaged to that extent and all its patrons benefitted to the extent to which such traffic contributes to the net revenue. It is obvious that without the amount of net contributed by this class of traffic, assuming a certain amount of revenue to be necessary, such revenue must be contributed entirely by the remaining traffic and the exclusion of this competitive traffic would increase the burden upon the other traffic to a corresponding extent."

See also *Fourth Section Violations in the Southeast* 30 I. C. C. 153, 177:

"It may fairly be concluded from the testimony that there is none of these rates for long-distance traffic which pays less than the additional cost of handling and their acceptance by the railways results in some net revenue and does not result in an increased burden upon traffic to and from intermediate points."

See also *Northern P. Ry. Co. v. Helvering*, (CCA 8, 1936) 83 Fed. 2d 508, 514.

In this connection it is well to remember the principle enunciated in *Lake Cargo Coal Cases*, 181 I. C. C. 39, 51, quoting from *Galveston Com'l. Assn. v. Galveston, H. & S. A. Ry. Co.*, 128 I. C. C. 349, 371:

"The fact that the law declares unlawful only discrimination that is unjust and only prejudice that is undue indicates that it was the intent to give the carriers some latitude in fixing rates,

and that distance or cost of service need not be the sole criterion by which rates shall be measured."

Furthermore, we should not confuse those cases in which it is contended by a carrier that a rate fixed by a utility commission is confiscatory and those cases in which the rate is initiated by the carrier. In the latter instance the rate may be much lower and still be reasonable within the test to be applied under the circumstances. To illustrate the point, a rather lengthy quotation from the opinion of the Interstate Commerce Commission in *Transcontinental Cases of 1922*, 74 I. C. C. 48, at pages 68-71, is helpful:

"For the intermountain interests it is argued that a rate to be reasonably compensatory to the more distant terminal point must bear its full share of operating expenses, interest on funded debt, equipment and joint facility rents, taxes, and the percentage return fixed by us pursuant to section 15a of the interstate commerce act. In support of this interpretation various court decisions are cited defining the words 'reasonably compensatory,' or words that are said to be tantamount thereto.

"We are unable to accept this interpretation of the phrase 'reasonably compensatory.' So interpreted, the long-and-short-haul rule of the fourth section must become absolute or rigid from the very nature of the case. According to this version of 'reasonably compensatory,' the rate to the farther distant point must yield its full share

of the expense of utilizing the additional track mileage covered, as well as its full share of the additional expenses incident to the longer use of equipment required for the longer haul. There may be difficulty in discovering to a nicety the exact legislative intent in the amended fourth section. But the rejection of an absolute long-and-short-haul clause by both Houses of Congress is inconsistent with any construction of the phrase in question which would be equivalent in effect to an absolute clause.

"A similar but less extreme interpretation of the word 'reasonably compensatory' is urged on behalf of various State commissions in the intermountain territory. It is pointed out that there is a margin between the rate which barely escapes being confiscatory and the highest rate which a regulating body may lawfully allow. To the intermediate point a rate might approach the latter limit while a rate to a more distant point might conceivably be less and yet not so low as to be confiscatory. Seemingly, the rate to the more distant point may contribute something less than a full proportionate share of return upon investment and thus theoretically be less than a greater rate to an intermediate point. This version of 'reasonably compensatory' seems to agree with the former interpretation in that both require that the rate to the more distant point must pay its full share of all operating expenses, but is more elastic in not requiring that it must contribute its full share to the return designated as profit. Both interpretations appear to hold in common

that a 'reasonably compensatory' rate cannot be less than a rate which, if imposed by a regulatory tribunal, would be adjudged nonconfiscatory.

"We are unable to accept this interpretation of the words 'reasonably compensatory' as used in the amended fourth section.

"Where a rate imposed by a regulatory body is under judicial review upon the allegation that the rate fixed is confiscatory, it has been held by the courts that a rate may not lawfully be fixed by such tribunal which is based alone on the out-of-pocket costs ascribable to that particular traffic, but that to be lawful the rate must be sufficient to cover a ratable proportion of the average cost of freight traffic generally, including a return on the property devoted to public service. To hold otherwise would compel the performance of a certain specified kind of service by the carrier at less than average cost. The extension of this principle to other classes of traffic, if pursued far enough, would bankrupt the road.

"Where, however, carriers voluntarily propose to reduce certain rates to an out-of-pocket *plus* basis in order to augment the total traffic carried, a wholly different situation is presented. The menace of confiscation is absent, for *volenti non fit injuria*; and the additional traffic, if secured with a resulting augmentation of net revenue instead of laying a burden upon other traffic, affords the possibility of lightening the burden thereon by bringing a greater tonnage under contribution to net revenue.

"The criteria of a reasonably compensatory

rate in a confiscation case are therefore essentially distinct from the criteria of a reasonably compensatory rate where carriers volunteer a reduction on certain rates to an out-of-pocket *plus* basis. In the first set of cases the carrier has presumably been charged with seeking to extract from the public which is served more than the services are reasonably worth; in the second set of cases the carrier is accused by protestants, not primarily of seeking to extort more than the service is reasonably worth to those who receive the service, but of working undue discrimination as between those who can and those who can not avail themselves of the lower rates voluntarily proposed.

"The criterion of a reasonably compensatory rate suggested by the carriers has been indicated above. It is summarized in the formula 'out-of-pocket-expenses-plus-some-profit'."

As this Court suggested in *Minneapolis & St. Louis R. R. Co* v. *Minnesota*, 186 U. S. 257, 22 S. Ct. 900, 46 L. Ed. 1151, at page 268 of the official report:

"... It sometimes happens that, for purposes of ultimate profit and of building up a future trade, railways carry both freight and passengers at a positive loss ..."

Putting it in another light, it was said by Mr. Justice Stone dissenting, in *Texas & Pacific Ry. Co.* v. *U. S.* 289 U. S. 627, 53 S. Ct. 768, 77 L. Ed. 1410, at page 668:

"... It is true that in cases arising before the enactment of the Transportation Act, 1920, by

which power was given to the Commission to fix a minimum rate, it could not remove a discrimination by prescribing a minimum rate to one of the competing localities . . . "

This was agreed to by the majority opinion at page 626, where it said:

"Since 1887, §1 has forbidden that an export or import rate be unreasonably high; and since the Transportation Act, 1920, the Commission has been charged to see that the rate be not so low as to render the receipts of the business unremunerative."

Of particular relevance to the present case, in the light of the record and the foregoing authorities, is the opinion of Mr. Justice Cardozo in *United States* v. *Chicago, M., St. P. & P. R. Co.*, 294 U. S. 499, 55 S. Ct. 462, 79 L. Ed. 1023, at pages 505-6 of the official report:

"The second report of the Commission is a long and discursive narrative. To paragraphs at the end give the key to its meaning:

" 'We find that the proposed rates, if permitted to become effective, would lead to a disruption of the rate structure on coal in the Indiana and related areas, thus impairing the revenue of the carriers serving those areas and their ability to provide the adequate and efficient transportation service contemplated by §15a of the act; that they would cause a disruption of the individual groups from which the rates are proposed; and that they would cause a disruption of the long-standing

rate relation existing for competitive purposes, between the several Indiana groups.

"'We find that the proposed rates would be unreasonable and in violation of §§ 1(5) . . . and 15a (2) of the act . . .'

"The statement in the second of these paragraphs that the proposed rates would be 'unreasonable' must be read in the light of the report as a whole, and then appears as a conclusion insufficient as a finding unless supported by facts more particularly stated . . . There is no suggestion in the report that the rates have been reduced as to be less than compensatory. True they do not reach the maxima beyond which charges are too low. A zone of reasonableness exists between maxima and minima within which a carrier is ordinarily free to adjust its charges for itself . . . We lay to one side cases of discrimination or preference or rivalry so keen as to be a menace to the steady and efficient service called for by the statute . . . Those tendencies excluded, 'a carrier is entitled to initiate rates and, in this connection, to adopt such policy of rate making as to it seems best . . . .'"

Previously, the learned Justice had said at page 504:

"This court has held that an order of the Interstate Commerce Commission is void unless supported by findings of the basic or quasi-jurisdictional facts conditioning its power. Florida v. United States, 282 U. S. 194, 215, 75 L. Ed. 291, 304, 51 S. Ct. 119; United States v. Baltimore & O. R. Co., January 7, 1935, 293 U. S. 454, ante."

That statement leads us to a consideration of the authorities indicating the extent of the judicial review the Appellant is entitled to in the present proceeding.

Counsel is not sure whether the decision in *Crowell* v. *Benson*, 285 U. S. 22, 52 S. Ct. 285, 76 L. Ed. 598, is still the law in all its aspects. At any rate we are not asking for a trial *de novo* on any point. We are willing to submit the question on the record made before the Commission and to that extent at least it is believed that *Crowell* v. *Benson* does represent the existing law, particularly where it was said, at page 254 of the particular report:

> ". . . A different question is presented where determinations of fact are fundamental or 'jurisdictional', in the sense that their existence is a condition precedent to the operation of the statutory scheme . . . "

In that case the Court cited *I. C. C.* v. *Humboldt SS. Co.*, 224 U. S. 474, 32 S. Ct. 556, 56 L. Ed. 849, where it was said at page 484:

> ". . . It is true there may be a jurisdiction to determine possession of jurisdiction. *Ex parte Harding*, 219 U. S. 363. But the full doctrine of that case cannot be extended to administrative officers. The Interstate Commerce Commission is purely an administrative body."

The same doctrine was enunciated by Mr. Justice Brandeis in *Ng Fung Ho* v. *White*, 259 U. S. 276, 42 S. Ct. 492, 66 L. Ed. 938, at pages 942-3:

> "Jurisdiction in the executive to order deporta-

tion exists only if the person arrested is an alien. The claim of citizenship is thus a denial of an essential jurisdictional fact."

While the phrase "jurisdictional fact" is not used, the same fundamental thought was applied by this Court in *Kessler* v. *Strecker*, 307 U. S. 22, 59 S. Ct. 694, 83 L. Ed. 1082, at page 1090:

> ". . . The proceeding for deportation is administrative. If the hearing was fair, if there was evidence to support the finding of the Secretary, and if no error of law was committed, the ruling of the Department must stand and cannot be corrected in judicial proceedings. If, on the other hand, one of the elements is lacking, the proceeding is void and must be set aside . . . "

Similar is *Federal Radio Commission* v. *Nelson Brothers Co.*, 289 U. S. 266, 53 S. Ct. 627, 77 L. Ed. 1166, where Chief Justice Hughes said at page 277:

> "A finding without substantial evidence to support it—an arbitrary or capricious finding—does violence to the law. It is without sanction of the authority conferred. And an inquiry into the facts before the Commission, in order to ascertain whether its findings are thus vitiated, belongs to the judicial province and does not trench upon, or involve the question of, administrative authority . . . "

Applied to a body of the nature of the Maritime Commission, it was said in *I. C. C.* v. *U. P. R. R. Co.*, 222 U. S. 541, 32 S. Ct. 108, 56 L. Ed. 308, at page 547:

that the findings of the Interstate Commerce Commission are final unless "beyond its statutory power; or . . . based on a mistake of law".

To these principles should be applied the facts as disclosed by the record produced before the Maritime Commission and upon which the order under attack was based.

We need go no farther than to the report of the Commission. It shows conclusively that the present wharf storage rates do pay this Appellant more than its out-of-pocket costs sustain in that connection.

In the first place, the Commission orders the assessment of a wharf storage rate in the nature of a penalty for the first five days after the expiration of free time. In its final report, in discussing the Edwards-Differding formula advanced in Docket 4090 before the California Railroad Commission, and which was adopted by the Maritime Commission in this case:

> "A *penalty* demurrage charge of 5c per day is exacted for the first five days beyond the expiration of free time. *This charge is intended to compel the removal of cargo off the dock or into storage.*" (R., p. 35.) (Italics supplied.)

And, in its conclusion in this respect, Appellee Commission held:

> "Upon consideration of all the evidence, we are of the opinion that the 4090 scale, *including the 5-cent penalty rate*, should be adopted . . . ." (Italics supplied.) (R., pp. 37-8.)

Obviously, a charge which is a penalty is much higher than a charge which is merely compensatory.

The quoted portion of the report discloses the true intention of the Commission in this case. Whether or not the goods remain on the dock is no concern of the Commission: Certainly it has no bearing upon the matter of discrimination; and it makes very apparent that the Commission was not at all concerned with discrimination but was merely trying to hang its hat on it in order to accomplish its real purpose, namely, to raise the rates of wharf storage at the San Francisco Bay terminals to a level which it believed to be compensatory.

Is that not enough to show that the Commission's finding of "discrimination" and "burden on other traffic" is merely shadow and not substance?

The Commission has affixed to its final report an appendix entitled "Comparative Statement Showing for Eastbay Terminals Daily Wharf Demurrage Rates and Revenue for Thirty Days Under Existing Tariffs; Rates Proposed by California Railroad Commission in Case 4090 and Revenue Thereunder for Thirty Days; And Minimum Cost of Storage With Normal Piling for Thirty Days on Those Commodities for Which Floor Space Requirements Are Available. Rates, Revenue and Cost in Cents Per Ton of 2000 Pounds" (R., pp. 42-43.)

It shows, for instance, that under the existing rates the terminals' revenue on merchandise N.O.S. stored for thirty days would be 60c. It computes the cost of the

necessary floor space at 49.06c and all other costs at 45.23c, including administrative overhead, and other items that are not out-of-pocket expenses.

The floor space cost, of course, reflects the cost of construction, taxes, if any, interest on investment, repairs and depreciation, and like factors. Those are not out-of-pocket costs for the reason they remain constant whether or not the space is used. Therefore, the item of 49.06c should be eliminated, leaving a revenue of 60c for thirty days, against an out-of-pocket cost which is something less than 45.23c. By no stretch of the imagination can such a rate be said to cast a burden upon other traffic. And it should be noted that the 45.23c cost figure includes other items, such as general administrative overhead and other like items of constant recurrence, that are never chargeable as out-of-pocket expense.

Let us take the case of canned goods, which is one of the largest moving commodities using wharf storage at San Francisco Bay Terminals. The revenue is shown at 37½c for thirty days. The cost, excluding the floor space cost is 45.23c for a like period. However, for that commodity the report and order require the assessment of a handling charge of 25c. It must be presumed that this charge represents approximately the cost of the handling.

It is shown abundantly in the record that because of the broad transit sheds on the municipal facilities at

Oakland, such handling is very rarely indulged in. This is recognized in the report where it is said:

> "Oakland and Parr Richmond with a large amount of unused transit space available, criticize the inclusion of the cost of high piling and extra handling because at their terminals little additional handling of cargo is necessary. This argument overlooks the fact that the handling charge is directly related to the most efficient use of floor space. If it was cheaper to leave goods as the stevedores and shipper dropped them, this cost was used. But where the savings in floor space cost more than compensated for the expense of high piling over the period the goods remained in storage, costs based on high piling were used as they resulted in a lower cost to the shipper. Also the argument ignores the necessity for an adequate return on the costs of floor space because if the cargo is not handled by high piling or otherwise it follows that additional costs are automatically incurred." (R., p. 37.)

It is clear that the Commission has considered floor space and cost of handling as counteracting factors in its "all other costs" column. Therefore, if we are correct in our premise that floor space shall not be counted in the cost because it is not an out-of-pocket cost, and there is no handling, it follows that the sum of 25c should be deducted from the sum of 45.23c, leaving a revenue to the terminal of 37½c per thirty days, against an out-of-pocket expense of 20.23c, or something in that neighborhood.

There is nothing in the record to dispute these facts. That, of course, is a negative statement, but the Court should accept it unless the Government is able to point to the pages of the record disproving it. This challenge was not met before the Commission or in the Court below.

Bearing in mind that the Maritime Commission is one of limited jurisdiction, and that such jurisdiction must be predicated on facts in the record; that it here asserts jurisdiction to prescribe a rate for the purported purpose of removing a discrimination; that a rate that meets out-of-pocket costs plus a little over casts no burden on other traffic, and hence, cannot be discriminatory; that the Commission's own report shows (1) that the rates presently in effect produce more than out-of-pocket expense to this Appellant and (2) that the rate prescribed by the Commission includes a penalty, which is obviously higher than a fully compensatory rate, and more patently, much higher than one producing out-of-pocket costs—considering all these factors, it is submitted that the order of the Commission is arbitrary and capricious and beyond the jurisdiction with which Congress endowed it.

Point D. The Evidence Does Not Support the Commission's Order With Respect to Free Time Allowances.

Frankly, this matter of free time, in itself, is of no great importance to this Appellant. We have no real objection to observing the free time periods which the Commission thinks are reasonable. Throughout the hearings and in our briefs and in the argument before the Commission we took no particular notice of it because, as stated, we were rather indifferent on the point.

What we are concerned with primarily is the matter of wharf storage rates, and we attack the Commission's finding as to free time because the Government is now urging that its order in respect to wharf storage be supported because of its effect upon the free time.

In the Court below the Government said in its brief:

> "The Commission is not making any attempt to extend its power to cover rates. The granting of excessive *free* time in itself raises no question of rates—but the discriminatory and unreasonable practices of the respondents in respect of free time cannot be effectively prevented *if by means of nominal or non-compensatory rates the terminals can continue the discrimination and unreasonableness even though to a lesser degree.* Discrimination does not cease to be such merely because it is reduced in degree.
>
> "In order to enforce the observance of reasonable and non-discriminatory regulations and practices, the Commission has also specified that the respondents shall charge compensatory rates, or

rather rates more nearly compensatory than those heretofore in effect. The rates approved by the Commission are expressly found to be not in excess of cost, and the charging of such rates is necessary in order to prevent evasion of the Commission's order *for, if the respondents may fix rates after expiration of free time without any control, they can carry on with impunity the discriminatory and unreasonable practices in respect of free time.* Certainly the Commission has the incidental power to prevent evasion of its order; and its order may be justified on this ground alone." (Italics supplied.)

In view of this contention, the order of the Commission in connection with free time allowance becomes a matter of importance and it is not supported by any evidence. Therefore, it is void.

In discussing free time, the Commission says in its report:

". . . Generally ten days are permitted except that San Francisco allows five days in coastwise and intercoastal (in-bound) trade and seven days in the foreign and offshore trades (in-bound). But under the stress of competition, most of the larger terminals, in cases of emergencies, extend the free time either to cover the additional number of days of delay to the vessel or in the case of Oakland, to such number of days as 'is warranted and equitable in each individual case', according to the judgment of the Port Manager. This practice appears to be based on the theory that if the shipper

is not at fault the terminal operator should waive the demurrage. Obviously, when demurrage is waived, transit shed space, the most valuable in the terminal, is being wasted. This involves a cost which has to be recouped somewhere and it is unreasonable that those shippers who do not use the piers beyond the free time should be forced to bear the burden, either directly or indirectly. This practice also affords an opportunity to discriminate between shippers." (R., pp. 23-4.)

This is an example of burning the barn down to get the rat. It is apparent that the Commission has two objections on this matter of free time; first, that the extension of free time casts a burden on other shippers and, secondly, that the element of discretion affords an opportunity for discrimination. Even if we concede the validity of those objections, it does not warrant the overturning of the entire free time structure. If extensions of the free time period, either on a fixed or discretionary basis, is discriminatory, that affords no foundation for an order of the Commission shortening the regular free time allowance set up in the tariffs of these petitioners. In other words, if the order of the Commission had stopped with a prohibition of extension of free time beyond that set up in the tariff, there would be some evidence in the record and some support in the Commission's findings for its order. There is no such evidence nor support for the further step of the Commission in cutting down the fixed free time period.

Finding No. 6 of the Commission reads in its pertinent part as follows:

> "That there is a lack of uniformity in, and application of, free time rules, regulations and practices of respondents; and that the manner in which they are applied affords opportunity for unequal treatment of shippers. Said rules, regulations and practices are unduly prejudicial and preferential in violation of Section 16 and unreasonable in violation of Section 17 of the Shipping Act, 1916, as amended. We prescribe, and shall order enforced a regulation providing that free time allowances should be no greater than the period set forth in Table 1 of this report . . . "

That table reads as follows:

	In-bound Days	Out-bound Days
Coastwise and Inland Waterway	5	5
Intercoastal	5	7
Foreign	7	7
Transshipment	10	10

Mind, we are not speaking now of any extension of free time, but of the regular fixed period which is set up in the tariffs of these petitioners.

It is submitted that there is no evidence to support the action of the Commission in cutting the regular fixed period. The following is all that the Commission has to say about it in its report:

"In *Storage of Import Property*, 1 U. S. M. C. 676, 682 (1937), we said:

> The furnishing of valuable free storage facilities to certain shippers and consignees beyond a reasonable period results in substantial inequality of service as between different shippers of import traffic, and is beyond the recognized functions of a common carrier.

"And, in *Storage Charges under Agreements 6205 and 6215*, 2 U. S. M. C. 48, 52 (1939), we stated:

> All receivers of cargo must use the piers, and any preferred treatment, by charges or otherwise, of certain classes of cargo results in discrimination against other cargo.

"Members of Northwest Marine Terminal Association grant no extensions of free time. They, as well as terminals at Los Angeles, provide 10 days' free time in inetrcoastal (outbound) and foreign off-shore trades. In other trades these terminals like San Francisco, grant 5 days except that at Seattle and Tacoma the time is 10 days on coastwise out-bound. The California Commission, in *Case No. 4090, supra*, after a study of the various factors involved in the assembling and distribution of cargo at San Francisco Bay port, location of points of origin, vessels' organizations, customs clearance, efficient loading and other matters, recommended free time periods, exclusive of Sundays and holidays, as follows:"

Then follows Table 1, above set forth.

"Counsel for the Commission recommended the

prescription of these periods and exceptions thereto as reasonable regulations under Section 17 of the Shipping Act, 1916. Nearly all of the witnesses who testified on this subject favored stricter free time regulations than those now in effect. With few exceptions, respondents, in their reply briefs, showed little opposition to the periods recommended, most of their comments being directed to the exceptions proposed . . .

"Upon consideration of the evidence outlined above, the free time period set forth in Table 1 is found to be reasonable and proper. Respondents' rules, regulations and practices with respect to free time, in so far as they permit free time allowances greater than outlined in said table, exclusive of Sundays and holidays are unduly prejudicial and preferential in violation of section 16 of the Shipping Act, 1916, as amended, and unreasonable in violation of section 17 of that act . . ."

I have quoted all the pertinent evidence referred to by the report. If you eliminate the matter of the extension of the fixed period of free time allowance, there is not an iota of evidence to support the Commission's finding that the existing fixed periods are unreasonable, preferential or prejudicial. They apply to all shippers alike. Moreover it is definitely shown by the Commission's own report, that members of the Northwest Marine Terminal Association, that is, the ports on Puget Sound and the Columbia River, and Los Angeles allow ten days' free time in intercoastal out-bound, and foreign and offshore trades, and that Seattle and Tacoma allow ten days on

coastwise out-bound. In the case of Appellant, under Table 1, it would be permitted to grant an allowance of only five days in coastwise out-bound and seven days in intercoastal, foreign and offshore out-bound. As the report recognizes, the existing period is generally ten days, as in the case of this Appellant.

There is no fact adduced by the Commission in support of its *ipse dixit* that the existing free time provisions of Appellant's tariff are unreasonable. There is nothing in the record tending to prove them so.

It is respectfully submitted that the Commission should not be allowed to assume to itself the power to regulate rates through subterfuge.

Point E. The Commission Has No Power Over Wharf Storage.

This point has been urged repeatedly before the Commission and the Court below and has gone heedless. Wharf storage, by express definition in the Shipping Act, 1916, is excluded from the purview of the Commission.

As we read the decision of this Court in *Swift & Co. v. United States*, 316 U. S. 216; 62 S. Ct. R. 948, 956; 86 L. Ed. 1391, we believe it has been decided as we urged it.

We have heretofore indicated that in certain functions the wharf operator acts as the agent of the carrier and in certain others as agent of the shipper or consignee. The distinction is recognized in *Armour & Co. v. Alton R. Co.*, 111 Fed. 2d 913, 915.

The question involved was whether the consignee of cattle could recover from the rail carrier the so-called yardage fee imposed by Union Stock Yards Company at Chicago on each head of stock passing through the yard, the theory being that this was an unloading charge which had already been paid for in the line haul rate. The Court said:

> "'At the yards employees of the Yards Company unload the livestock into unloading pens located upon the company's property. For this service the company charges the carriers a certain rate which is filed with the Interstate Commerce Commission. Since this service is a rail transpor-

tation service, rendered by the carriers (through their agent, the Yards Company) for the shipper, the charge therefor is covered by the line-haul rate. Adams v. Mills, 286 U. S. 397, 52 S. Ct. 589, 76 L. Ed. 1184. On the other hand, in addition to and separate from the rendition of rail transportation services, the Yards Company also performs specified stockyard services such as holding, feeding and storing. In rendering such a special service the company is subject to the Packers and Stockyards Act, and for such services charges the packer a certain rate which is filed with the Secretary of Agriculture. 42 Stat. 159, 7 U. S. C. Secs. 181 et seq., 201 (b), 226 7 U. S. C. A. §§181 et seq., 201 (b), 226.

"It might be said that in the rendition of a transportation service the Yards Company acts as agent of the carriers, but that in the performance of a stockyard service it acts as agent of the packer. Adams v. Mills; supra; Union Stock Yard & Transit Co. v. United States, supra; Burton v. Wabash Ry. Co., 332 Mo. 268; 58 S. W. 2d 443, 447. It has also been said that 'Stockyard services' do not commence until unloading ends; they end when loading begins.' Denver Stock Yards v. United States, 304 U. S. 470, 477, 58 S. Ct. 990, 82 L. Ed. 1469. See also Burton case, supra."

Storage, other than that involved in the so-called free time period, is not part of transportation. This is recognized in *Ex parte* 104, *Propriety of Operating Practices, New York Warehousing*, in the decision in 198

I. C. C. 134, affirmed on the rehearing in 216 I. C. C. at 292. The Commission said, at page 195:

> "While the storage of property is clearly within the transportation service which carriers are obligated to furnish, their duty under these provisions extends only to that storage which is necessarily incidental to the transporting of such property. To be incidental business *the storage must be preliminary either to immediate transportation or immediate removal.*" (Italics supplied.)

Of this, the Supreme Court said, affirming the Commission's order in *Baltimore & O. R. Co.* v. *United States*, *supra*, at page 516:

> "Neither the complaints of the competitors of the carriers in the warehousing business nor the terms of the commission's order are directed at the involuntary storage of goods incidental to transportation. This is the period before or after shipment during which the goods occupy cars or floors without any charge above the strictly transportation rate."

The point we make is that wharf storage is furnished independently of the water carrier. It is arranged for directly by the shipper or consignee and the carriers are not consulted. The charge for the service is not included in the carrier's compensation and the carrier undergoes no liability on its account.

The Commission's witness, Mr. Differding, makes this

clear, where the following question was asked and answer given.

> "MR. GRAHAM: Q. Whereas, on some of the other terminals around the bay which have more space available, revenue plays an important part in this problem?
>
> "A. Yes. Witness the two San Francisco piers No. 45 and 56 and the Eastbay terminals. They were built definitely for the handling of cargo for periods of time, and properly so; whereas the finger piers are the old type and they are under assignment by a *steamship operator who has no interest whatsoever in wharf demurrage cargo* and he can't be blamed for that." (Italics supplied.) (R., p. 726.)

Let us then refer again to the definition of "other person" contained in the first section of the Shipping Act, 1916. It reads:

> "The term 'other person subject to this act' means any person not included in the term 'common carrier by water' carrying on the business of forwarding or furnishing wharfage, dock, warehouse or other terminal facilities *in connection with a common carrier by water.*" (Italics supplied.)

The italicized phrase precludes any possibility of the Maritime Commission successfully asserting jurisdiction over wharf storage rates. Certainly by no stretch of the imagination can wharf storage be held to be furnished "in connection with a common carrier by water", since it is no part of transportation and since the common

carrier by water has no interest in it. It is furnished altogether independently. Any contrary holding would give the Maritime Commission the right to regulate the rates of any uptown warehouse which happened to store cargo that had moved in or was to move out by water, because there can be no distinction between the service rendered by such a warehouse and the wharf storage service.

It is respectfully submited that the Maritime Commission, whatever its other regulatory powers may be, has no jurisdiction over wharf storage or the rates charged therefor.

Point F. The Commission Has No Power to Compel Municipal Leases and Agreements to Be Filed With It for Approval.

In its final report and order the Commission has held that a lease from Appellant City of Oakland to Howard Terminal, one of the respondents in Docket 555, and a similar lease from the City to McCormick Steamship Company, are required to be filed with and approved by the Appellee Commission. This is placed upon the ground that the City and the two lessees are "other persons" subject to the act and, because the leases require the lessees to conform their rates as nearly as practicable to those levied by the City, the leases are within the scope of Section 15 of the Shipping Act, 1916.

Special treatment of the subject under a separate heading is desirable for purposes of emphasis. We wish the Court to understand that the issue involved in this case is much broader than the mere regulation of rates.

A decision that the activities of the Board of Port Commissioners of the City of Oakland are subject to the scrutiny and review of the Appellee Commission should not be arrived at lightly, because of the disruption it would cause in governmental activities of this department of the City.

The Board has two types of functions. One consists in the direct operation of the wharves under its supervision. The second consists in the exercise of all the police power the City possesses in connection with its waterfront. In the latter capacity it adopts and enforces gen-

eral regulations for the public and welfare in that connection. It grants franchises for the operation of wharves, private and public utility wharves. (See *City of Oakland* v. *Hogan*, 41 Cal. App. 2d 333, and *City of Oakland* v. *El Dorado Terminal Company*, 41 Cal. App. 2d 320.)

It makes leases of tide and other lands and certain facilities on behalf of the City. Except in exceptional circumstances, these leases must be awarded at public bidding. (City Charter, Sec. 214. [Statutes of California, 1927, p. 1978] Sec. 51, subd. 41; [Statutes of California, 1911, p. 1551].)

While, generally, there has not been any competition in the bidding for leases, there have been occasions where it did occur. Once a lease has been let at public auction, it is obvious its terms cannot be changed. That, consequently, requires that the draft of the lease be submitted to the Maritime Commission before it is offered for public bidding, if the Commission's order is correct. At that time we would not be in a position to tell the Commission who the lessee would be. Consequently, the Commission could not decide, in many instances, whether or not approval of the lease would be in accordance with its policy.

On the other hand, if the Commission does have the power its claims, it is possible that the City charter is superseded by federal law, and that the requirements of public bidding as to leases within the reach of that power may be dispensed with, notwithstanding the desires of the electors of the City.

This question of how far the City charter and state law would be superseded will create the utmost confusion, and the local officers charged with the operation of the port will face the prospect of having to chart a difficult and, at times, impossible course between the Scylla of malfeasance in office for failing to obey local law and the Charybdis of the penalties prescribed in the Shipping Act, 1916.

CONCLUSION.

For each of the foregoing reasons, it is urged that the decision of the Court below should be reversed, with directions to set aside and permanently enjoin the order of the Commission complained of.

Dated at Oakland, California, November 3, 1943.

Respectfully submitted,

W. REGINALD JONES,
Port Attorney,
Counsel for Appellant.

FILE COPY

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1943

No. 22

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Appellant,

vs.

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Appellees.

REPLY BRIEF OF APPELLANT, CITY OF OAKLAND.

W. REGINALD JONES,
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REPLY BRIEF OF APPELLANT, CITY OF OAKLAND.

Introduction.

It is difficult to follow the Solicitor-General in his reading of the authorities.

For example, on pages 43-44 of his brief, in discussing free time allowances, he says:

> "The Commission's condemnation on these grounds of the practice of granting excessive free time allowances, as unduly preferential and unreasonable, finds ample support in the authorities. See pp. 62-68 *infra*; cf. *Turner Lumber Co.* v. *C. M. & St. P. Ry.*, 271 U. S. 259, 262."

That case can be read over and over and no support will be found in it for the proposition to which it is cited.

In that case, the carrier *on its own motion* raised the demurrage rates on certain cars loaded with lumber (but not those used for other commodities). On suit of a shipper, the court upheld the rates, saying:

> "* * * Neither the Constitution nor the rule of reason requires that either freight or demurrage charges or the reconsignment privilege shall be the same for all commodities."

It was not a case of any commission, or any court, condemning any practice as preferential or unreasonable, or discriminatory. It was precisely the opposite. A distinction between services, initiated by the carrier, was upheld.

How that case, or any language in it, supports the Solicitor-General, cannot be conceived. Why he cited it for consideration cannot be conceived.

It is not an isolated example.

In the footnote on page 51 of his brief, the Solicitor-General says:

> "* * * It is clear, however, that the power to prevent discriminatory rates (Secs. 16 and 17) necessarily involves the power to fix minimum rates in cases, such as those of inordinately low 'missionary rates' (See *Minn. & St. L. R. Co.* v. *Minnesota*, 186 U. S. 257, 267; *So. Pac. Co.* v. *I. C. C.*, 219 U. S. 433, 439), where the discrimination can most effectively be covered by fixing minimum rates."

Neither of the cases cited even contain any language supporting the thesis advanced.

Neither do the facts of either of them lend any reinforcement.

The *Southern Pacific* case, to take the least relevant first, merely held that the Interstate Commerce Commission could not compel a railroad to maintain a low lumber rate it had initiated to meet water competition from the Willamette

valley in Oregon to the San Francisco bay. If anything, this decision upheld those so-called "missionary rates".

But the *Minneapolis & St. Louis Railroad* case, also cited, not only does not support the Solicitor-General's position, but is a direct authority upholding what this appellant contends, namely, that there is no discrimination between users of a public utility if each pays at least "out-of-pocket" costs. The opinion pronounces, at page 267:

> "Notwithstanding the evidence of the defendant that, if the rates upon *all* merchandise were fixed at the amount imposed by the Commission upon coal in carload lots, the road would not pay its operating expenses, it may well be that the existing rates on other merchandise, which are not disturbed by the Commission, may be sufficient to earn a large profit to the company, though it may earn little or nothing upon coal in carload lots * * * It often happens that, to meet competition from roads at particular points, the companies themselves fix a disproportionately low rate upon certain classes of freight consigned to these points. The right to permit this to be done is expressly reserved to the Interstate Commerce Commission by section 4 of the act * * * and has repeatedly been sanctioned by decisions of this court * * *"

We do not mean to suggest that all the decisions cited in the brief of the Solicitor-General can be turned around that way. With nine-tenths of them, those supporting the general propositions, we agree. We merely ask the court to read those we controvert, and not take our word, or that of the Government, for the meaning of any case in dispute.

In the introduction to the argument in our opening brief, we called attention to the grave due process of law question that could be involved in this proceeding if the customary degree of finality were accorded the administrative decision here in question.

We pointed out that the Maritime Commission acted not only as accuser, prosecutor and judge, but that it also was the witness—the expert witness—upon which it predicated its findings.

This is not disputed in the brief of the Solicitor-General. It is conceded.

For instance, on page 8 of the Government's brief, Mr. Differding is called "the principal witness on these matters". On page 66 he is called the "chief witness". See also pages 71 and 75, *inter alia*.

With all our pronouncements of administrative expertness set aside for the moment, is this the process of law guaranteed, if coupled with it is found the doctrine of finality of administrative decision? That is what the Government contends.

On pages 40 and 41 of the brief the Solicitor-General urges the doctrine of finality. If that doctrine is to be accepted, I reopen my point of due process of law, because unless there is real and adequate judicial review in this case, the procedure being so unfair, there is no safeguard for a citizen, or a city, or a state.

To bring the matter into relief, let us consider the following:

The Maritime Commission admitted, and the Solicitor-General concedes, that the former has no power to regulate the rates, as such, of any wharfinger.

It is contended that it has the power to remove discriminations, under sections 16 and 17 of the Shipping Act. Suppose we concede that, *arguendo*. It proceeds, that if the users of wharf storage do not pay their full way (and we leave out of consideration here the out-of-pocket theory) that thereby the users of other services of the wharfinger are forced to assume the burden; that thereby a discrimination is born.

That is the essence of the argument. There is a discrimination because one customer must pay for what another customer uses.

But suppose that burden is not assumed. Suppose, instead, that the wharfinger assumes it. Is there any burden?

There is no requirement of the Constitution, or of the Shipping Act, that the City of Oakland make a profit in its governmental capacity of operating wharves. (*Nashville* v. *Ray*, 19 Wall. 468.) As a matter of fact, all its wharfinger operations are carried on at a loss. See Government's brief, p. 16, n. 14: "* * * The inclusion of the interest paid, other than that assigned to the city's municipal airport, revealed a loss of $95,859.33 on the terminal operations." On page 68 of that brief it is shown that Encinal, Howard, Oakland and certain San Francisco piers handled respectively, in one year, approximately 33,000, 29,500, 18,000 and 5,500 tons respectively of wharf storage cargo on an average over a 12-month period. The percentage of stored cargo to all cargo moving over the wharves was, respectively, 5.89%, 7.62%, 3.07% and 2.54%.

Turning back to page 16 of the brief, we find that for the same year, Encinal's and Howard's total revenues from wharf storage and wharf demurrage were roughly $24,500 and $31,500 respectively.

Each of those terminals handled more storage cargo than did Oakland. The increase recommended by Mr. Differding and the Commission is about 33⅓% plus an estimated 10% increase in wharf storage revenues because of the reduction of free time. (R. p. 716).

So, a third of the Howard figure, the highest, plus 10%, when added to an assumed equivalent revenue, doesn't come close to the sum of $95,000.00 which it is asserted the City of Oakland loses from its total port operations in a given year. Isn't the Commission hoist on its own petard?

The point is, could the City reduce its other charges if wharf storage rates are increased. If it couldn't how can it be said that the maintenance of the existing storage rates casts a burden on the users of other services. The city has assumed the burden.

If so, there is no discrimination.

That is to say, one can throw back in the teeth of the Commission its own statements, those of its counsel, to belie what its expert witness testified to.

Are we then to be met with the proposition that if there is any evidence to support it, the administrative decision is final?

And if that proposition is advanced, is that due process of law?

Free Time.

We said in our opening brief (p. 95 *et seq.*) that the matter of free time allowance was of no particular concern to this appellant.

We opposed the Commission's order with respect to it because we believed it has no right to order us in any event, and more particularly, because, in the lower court, it hung its hat on free time as a reason for sustaining its order as to wharf storage.

The brief of the Solicitor-General follows the same pattern in this respect. (See pages 39-46, Appellee's brief.)

It is no answer to say (as on p. 44 thereof) that "nearly all of the witnesses who testified on this subject favored stricter free time allowances than those now in effect." We believe Port of Oakland witnesses so testified, and if they didn't, we concede we adhere to that proposition. But we did not concede that the existing free time allowance was discriminatory. We did not concede the Maritime Commission had any jurisdiction to *order* us to change it.

We should remember always (if we concede, as we shall for the remainder of this brief, Congressional authority and intention to regulate this appellant), that the question is one only of discrimination.

There is no intimation in the record that the existing free time allowance is not open to all. It is published in the tariff. How, then, can it be discriminatory?

There is one feature of our existing free-time rules which probably is objectionable from a public utility standpoint. This is the provision permitting the Port Manager, in his discretion, to extend free time when the vessel is delayed. All our competitors have a similar saving clause and the purpose is this: In these days of steamships, about the only thing that delays a vessel is a labor dispute. That dispute may or may not concern the terminal operator, but he is an intermediary between the shipper or consignee and the vessel. In a sense, he represents the vessel on land. He gets business only if goods move by water. He may interchange between water and rail, but if the movement is all rail, he does not share. His pecuniary interest, therefore, is to protect water movement.

Consequently the wharfinger has assumed certain risks attendant on water shipments, at least on the Pacific Coast, where waterfront strikes have been too common for the last decade. Out there, if a wharf is picketed, no truck or rail car will serve it. The result is that, in extreme cases, cargo has lain on the wharf for many months. The shipper or consignee, who has his money tied up in it, is helpless. The compensating factor is that the labor costs of a terminal during a strike are practically nil. Doesn't it therefore seem reasonable that the wharfinger should extend the free-time period, so the shipper or consignee should not have to pay for involuntary storage?

I concede that the Port of Oakland tariff as so written with respect to free time lends itself to discrimination. It

can be remedied by eliminating the discretion of the Port Manager and setting up certain distinct rules governing extensions of free time.

But the fact that there is a discretion (which may be discriminatory in practice, and this we deny) does not warrant a finding that the whole free time set-up is discriminatory.

That is the basis upon which the Maritime Commission's order rests.

That is the reason I said in my opening brief that the Commission was burning down the barn to get the rat.

The fact that the element of discretion may be objectionable from the concept of public utility law does not warrant the destruction of the rule to which it is the exception.

And this thought should be borne in mind throughout the consideration of this cause, since the Government bases its order concerning free time on this exception, and then, in the major issue of the case, holds that the rates of wharf storage must be limited in order to make effectual its order regarding free time.

As a matter of fact, the Commission has prescribed a maximum free time which is less than that granted by Los Angeles and the Puget Sound and Columbia River ports, which are the only Pacific Coast competitors of the San Francisco bay.

See Record, p. 25 (the Report of the Commission) where it is said (and the Northwest Marine Terminal Association means the ports of the Columbia and Puget Sound):

> "Members of Northwest Marine Terminal Association grant no extensions of free time. They, as well as terminals at Los Angeles, provide 10 days' free time in intercoastal (outbound) and foreign and offshore trades. In other trades these terminals, like San

Francisco, grant 5 days except that at Seattle and Tacoma the time is 10 days on coastwise outbound * * *."

The order of the Maritime Commission cuts most of those allowances in half (R., p. 25) as applied to these appellants. This it does on the supposition that our existing allowances are discriminatory.

If the entire Pacific Coast is essentially uniform, how can the rates of one port be labelled in that fashion?

If ever an administrative order were capricious, we submit this one is. According to the Government's own brief, that which obtains elsewhere is evidence of reasonableness (Br., p. 45).

Appellant's Wharf Storage Rates Are Not Discriminatory.

It is manifest from the brief of the Solicitor General that there is no contention that the Maritime Commission has any concern over the reasonableness of wharf storage rates maintained by this appellant. That is to say, they may or may not be reasonable, and by that, in the present proceedings, is meant too low.

The only thing the Commission can be interested in, what its order is predicated upon, is the matter of discrimination. To find a discrimination the order finds the rates are not compensatory, that a loss is incurred in rendering the service which must be made up by the users of other services of appellant. * *.

Appellant has denied this throughout the proceeding and has countered that the record does not disclose any loss resulting from the present rates; that the record shows that they recoup fully any out-of-pocket costs laid out in performing the service; that if this is so, there can be no burden cast on others.

The Government disputes both the law and the facts above summarized; but the principle is sound and the record sustains its applicability. (And, by way of passing, it should be remembered that the record must affirmatively show the alleged discrimination. The Commission cannot shift the burden of proof to this appellant.)

It might be well to outline what a wharfinger does in connection with wharf storage, to show what actually happens to cargo availing itself of it, and to compare it to ordinary warehousing.

Wharf storage may occur prior or subsequent to a water movement. The operation is the same in both instances, except for the matter of order.

To bring it into clearer relief, let us take first a shipment on which no storage occurs.

A vessel ties up at the wharf. The longshoremen, who are not port employees but are paid by the vessel, unload 100 tons of tin plate. The goods are checked in by port employees and the longshoremen place them at a point of rest on the wharf designated by the port. During the free time period, the consignee accepts delivery, either by motor truck or rail, either of which he pays for. The port doesn't touch the goods and its only direct labor costs are checking in on receipt, checking out on delivery, and the incidental paper work in billing.

The terminal's revenues in that case are a charge against the vessel, dockage, (based on the size of the ship), for the privilege of berthing; another charge against the vessel, called the service charge (based on the amount of cargo discharged) for the port's services in checking the cargo in and out, securing lines, delivering to the consignee, and the incidental paper work; and lastly, wharfage or tolls, assessed against the cargo for the privilege of transiting the wharf.

Let us now assume an identical movement, except to add the element of storage.

The vessel ties up at the wharf. The longshoremen, as in the previous case, unload 100 tons of tin plate. The goods are checked in by port employees and are placed at rest on the wharf at a point designated by the port. Instead of moving out during free time, the cargo remains on the wharf, in that identical spot, for one day beyond free time, or 10 or 30 days beyond it. When the consignee wishes to take delivery he does so, and the goods are checked out by port employees.

The only additional work the port does is in billing the storage charges accruing after free time has expired. That is the only direct, out-of-pocket expense it incurs.

The Solicitor-General's brief exhibits some surprise (pp. 46-47) that the "evidence showed that at Stockton and Oakland wharf demurrage rates were lower than public warehouse storage rates."

They should be. There is less handling of the goods, and handling is expensive.

Take a movement where goods are moved into a warehouse. If the goods come off a ship, every step above outlined occurs, and from then on, all the additional things that follow.

We have the goods on a motor truck or rail car, whether they come direct from the factory, or farm, or from a wharf after a water movement.

The tailgate of the truck contacts the warehouse platform, or the rail car pulls up to the siding. From there on the warehouse goes to work. *Its* employees move the goods into the place of rest, and when they are delivered after warehousing ends, *the warehouse employees* move them back to the platform. Warehouse employees check, receive and deliver (for this last item, it will be noted

from above, the steamship pays the port for the identical service).

Consequently, the warehouse performs the manual labor of moving the goods which the wharfinger does not (and for this the warehouse exacts what is known variously as a "handling" charge, or an "in and out" charge), and the clerical work in connection with it for which it must be paid (and for which the wharfinger already has been paid in the comparable wharf storage).

Consequently, it is idle to say that the rates of this appellant for wharf storage are lower than public warehouse rates. It would be unconscionable if it were not so. We don't handle the goods and we already have been paid for other services for which the warehouseman, very rightly, must charge.

This appellant has been rather proud of its wharf storage set-up, eliminating, as it does, the extra handling required in ordinary warehousing, and thus making possible a more economic distribution. The order of the Maritime Commission is not intended to foster it.

The last example, that of the warehouse movement, throws into relief the fallacy of the order.

The essence of that order with regard to storage is three-fold. It prescribes, (1st), a 5¢ per ton per day *penalty* demurrage charge for the first 5 days after free time "intended to compel the removal of the cargo off the dock or into storage" (Report of the Commissin, R. p. 35), (2nd) a "handling charge" of 25¢ to 40¢ per ton on the heaviest moving commodities, plus (3rd) a period storage rate (based on 15-day periods).

This appellant objects to all three elements.

Its transit sheds are of modern design, built with the idea of accommodating storage. The Commission grudgingly admits this. (See R. p. 37).

Secondly, a "handling charge" is a theft from the shipper unless the wharfinger does handle the goods.

Thirdly, this appellant always has insisted on a daily basis, instead of a period basis, of storage, because that seems equitable.

For example, under the Commission's order, leaving out penalty demurrage and the handling charge, a shipper of canned goods, which is the heaviest moving commodity at California ports, would pay 12½¢ per ton for a 15-day period (the existing rate is 1¼¢ per day).

Add to that a penalty rate of 5¢ per day and it is seen that the rate for 5 days is 25¢, compared to the existing rate of 12.5¢. On the 6th day the charge has been 25¢ plus the handling charge of 25¢, plus the 12.5¢ charge for the period basis of storage. That means, on the 6th day, the cargo will be assessed 62½¢ which is certainly enough to drive the cargo off the wharves and into the warehouses.

Our competitors maintain warehouses on the east side of the bay.

The Solicitor General in discussing the contention that the power to fix rates is prohibited by the structure of Sections 16, 17 and 18, states that in the footnote on page 51 "If carried to its logical conclusion this argument, which is a sort of *expressio unius* argument, would mean that no power was conferred to fix the minimum rates of carriers because Section 18 is specific as to the power to fix minimum rates."

That is precisely what appellant contends and authorities bear it out. The Solicitor-General keeps alluding to the fact that the Shipping Act, 1916, was modelled upon the Interstate Commerce Act; but it was not until 1920 (with the enactment of the Transportation Act of 1920) that the Interstate Commerce Commission had any power over minimum rates.

We pointed that out in our opening brief on pages 85-86, where we quoted Stone, J., dissenting in *Texas & Pacific Ry. Co.* v. *United States*, 289 U. S. 627, at 668, where he stated:

> "* * * It is true that in cases arising before the Transportation Act, 1920, by which power was given to the Commission to fix the minimum rate, it could not remove a discrimination by prescribing a minimum rate to one of the competing localities. * * *"

We also note the opinion of Brandeis, Jr., in *Skinner & Eddy Corp.* v. *United States*, 249 U. S. 557, 565.

> "Congress, however, steadfastly withheld from the Commission power to prevent by direct action the charging of unreasonably low rates. The common law did not recognize that the rate of a common carrier might be so low as to constitute a wrong; and the Congress has declined to declare such a rule * * *."

Consequently, if Congress had not until 1920 given the Interstate Commerce Commission power to fix minimum rates, there is no reason for alarm that it did not include such a power when the Shipping Act was made the law four years earlier. All the more there is no reason to read into the Shipping Act the right to fix such a rate.

Nevertheless that is precisely what the Commission is trying to accomplish in this case. It sets up very definite rates below which this appellant may not carry on its business.

We pointed out in our opening brief at page 66 *et seq.* that it was not until the enactment of the Act of June 23, 1938 (52 Stat. 964) that Congress gave the Maritime Commission any power in connection with minimum rates and that this statute, which took the form of an amendment to the Shipping Act, 1916, does not mention the

phrase "other person(s)", which is the only phrase by which it can be contended that this appellant is subject to any of the provisions of the Shipping Act.

It is going far afield, as the Solicitor-General does in the note on page 52 of his brief, to contend that because the Act of 1938 also mentions a maximum rate that the argument of this appellant necessarily results in the construction that the Shipping Act prior to that time contained no safeguard against exorbitant charges.

The writer of this brief cannot feel that this contention is seriously advanced in view of the entire purpose of the Shipping Act to protect the patrons of water carriers and in view of the express language in Section 17 dealing with carriers in foreign commerce, and Section 18 dealing with carriers in Interstate Commerce, which authorized the Commission to establish reasonable rates as to such carriers. We have seen that similar language in the Interstate Commerce Act before the enactment of the Transportation Act, 1920, did not give the Commission any jurisdiction over minimum rates. It requires no citation of authority to assert that nevertheless that Commission did regulate the maxima which such rates might attain. The entire statutory set-up would have been fruitless unless this power had been granted and exercised.

In connection with the Government's contention that the fixing of a rate may be the regulation of a practice, and consequently to bolster its attempt to support the order of the Maritime Commission's assuming jurisdiction, it cites the case of *Swayne & Hoyt* v. *United States of America*, 300 U. S. 297. That case, your Court will recall, involved application of two sets of rates for identical services. If the shipper signed a contract he agreed to move all his water-borne goods from the Gulf Coast to the Pacific Coast on lines which were members of the Gulf

Pacific Coast Conference, he was given a certain rate. If, on the other hand, he refused to sign any such exclusive contract, he had to pay a higher rate for moving the same goods between the same points.

It should be noted that the Court was not concerned in that case with the level or reasonableness of either rate. The fact that there were two different rates for the same service meant that the proceeding was not a rate case at all but was one involving a practice, namely, the maintenance of rates varying for the same service.

The Court makes this clear when it says on page 303:

> "* * * A differential between appellant's rates on commodities transported under contract and the rates on the same commodities for non-contract shippers, was *prima facie* discriminatory since the two rates were charged for identical services and facilities and the narrow issue presented to the Secretary for decision was whether, in the conditions affecting the traffic involved, the discrimination was undue or unreasonable."

No such situation exists with the set of wharf storage rates or the free time rules presently applied by this appellant and which have been declared unlawful by the Maritime Commission in the order here under attack. They are open to all. But one set of rates, but one rule of free time applies to a given commodity in a given trade. The fact that this Court has held illegal the maintenance of two sets of rates for the rendering of identical service cannot in any way apply in the present instance; and it does not warrant the assumption that the maintenance of any particular set of rates is a practice.

The entire case simmers down to the question of whether or not the rates observed by this appellant are in fact discriminatory against any of the persons who use its facilities.

It is not surprising that the Solicitor-General relies most strongly upon the case of *Baltimore & Ohio R. R. Co. v. United States*, 305 U. S. 507.

We cited that case in our opening brief because, patently, the Maritime Commission had labored hard to bring this case within the scope of the rules therein laid down. The Commission found, for example, that the maintenance of the existing free time periods threw a burden upon the users of other services because many shippers could not avail themselves of a 10-day period within which to assemble goods for water movement, or within which to accept delivery after the water carrier had left them on the wharf. Likewise it found that our wharf storage rates were not compensatory (and by reference to the Edwards-Differding Formula, we find that means a share in the general administrative overhead, of direct costs, labor costs and profit), as a consequence of which a burden was thrown on the users of other services.

In an attempt to bolster this conclusion the Solicitor-General sets up an interesting table on page 68 of his brief showing that on an average, only 1.56% to 7.62% of the cargo handled by the various wharfingers who were respondents before the Commission goes into storage. While the statement is not definitely made, the inference is permitted that only those percentages of the users of the wharfinger facilities on San Francisco Bay have any need for wharf storage, or for the free time allowance presently prescribed.

The answer is obvious. The table referred to does not show who controlled the amount of cargo handled across the facilities and who controlled the amount of cargo that was stored on them. In other words, the fact is, and it is perfectly consistent with the table that practically every shipper who used the facilities at those terminals, from time to time stored a small portion of the goods he moved

across them. The same is likewise true of free time. In the ordinary case the shipper can deliver his goods to the wharf for loading aboard a ship within a shorter period than that which is now allowed. On the other hand, and this might be true of any shipper, there may be occasions beyond his control when he cannot assemble his entire shipment within any time shorter than the 10 days. The probabilities are that every patron of this appellant has availed himself of the full free time period on more than one occasion.

The contention of the Solicitor-General with respect to appellant's argument that no burden is cast upon any other person by the maintenance of a rate which meets out-of-pocket costs, proceeds along similar lines. It says that someone must pay us a profit if the users of wharf storage do not. It overlooks the fact that the very report which holds our wharf storage rates to be unlawful because too low, likewise recognizes that our operations as a whole, not only do not make any return on the investment, but do not reach a point sufficient to satisfy the carrying charges on the bonded indebtedness by some $95,000 per year.

At page 71 and other places in the brief, the Solicitor General implies that this appellant did not cooperate with the Commission during its investigation. For example, it is said that we did not supply our cost figures in accordance with the Edwards-Differding formula.

Lest there be any misapprehension in this regard, we desire to point to the closing statement of Mr. Scoll, who acted as Commission's Counsel during the hearings, to the effect that both the appellant in this case and that in Docket No. 20, had cooperated fully (R., p. 739).

But, more than that, we could not be expected to comply with a formula that we had protested throughout the pro

ceeding as being inept and not adaptable to our way of carrying on business.

By that we mean that we do not regard wharf storage as a penalty rate in any sense. The phrase "wharf demurrage" does not appear anywhere in the Oakland tariff. (See R. p. 1125). We desire to encourage wharf storage in normal times.

There are a number of benefits that accrue from having goods stored on the wharf in addition to what we have mentioned earlier in this brief—matters which are of direct benefit to the wharfinger and to the other users of his facilities. For example, prior to the war the Pacific Coast European Conference maintained an arbitrary against Eastbay ports by requiring that at least 150 tons of cargo be ready for outbound movement before a vessel operating in that trade would call. The principal commodities moving in that trade were canned and dried foods. If, for example, there were on storage, on the wharf, a certain amount of dried beans, they could be used to meet the 150 ton requirement, where possibly only 100 or 125 tons of canned goods were destined for the port to which the particular ship was to sail. Without that backlog the shipper of the canned goods would not have obtained the service.

Reverting once more to this question of burden on other users the Solicitor-General on pages 63 and 64 cites the case of *East Tennessee etc. Ry. Co.* v. *Interstate Commerce Commission*, 181 U. S. 1, and quotes therefrom the following:

> "* * * Taking a case where the carrier cannot meet the competitive rate to a given point without transporting the merchandise at less than the cost of transportation, and therefore without bringing about a deficiency, which would have to be met by increased charges on other business. Clearly, in such a case, the engaging in such competitive traffic would both bring about an unjust discrimination and a disregard

of the public interest, since a tendency towards unreasonable rates on other business would arise from the carriage of traffic at less than the cost of transportation to particular places * * *."

It is obvious that when the Court there uses the phrase "at less than the cost of transportation", it is not thinking of a compensatory rate in the sense it is used by the Maritime Commission in this case. But what it has in mind is a rate which does not meet the out-of-pocket cost in providing that transportation. Otherwise the case is out of line with all the authorities we have cited in our opening brief relating to the out-of-pocket theory.

It is interesting to note on page 73 of the Government's brief the statement from the Record that unallocated overhead items comprise more than 50% of all terminal costs. It is to be noted that the Commission has recommended an increase which it says will average perhaps 33⅓%. If these figures are true, it is apparent that our out-of-pocket cost is not more than 50% of the rates recommended by the Commission and substantially less than those presently in effect. This follows because unallocated overhead is constant and would go on whether or not the particular traffic were handled.

Conclusion.

It is respectfully submitted that this Court should not permit the overriding of local public policy unless the National interests are prejudiced in some way thereby.

There is nothing in this case that tends in any way to show that a burden has been cast upon interstate commerce; that this appellant has done anything to restrict its free flow. On the other hand the maintenance of rates as low as is possible would seem to encourage the movement of goods in interstate commerce rather than the opposite.

We have gone into a number of refinements in the briefs herein about the intent of Congress and the meaning of precise phrases. We have probably overlooked the rule that contemporaneous construction of a statute generally is the best. The undisputed fact is that for 24 years after the enactment of the Shipping Act, 1916, no one, including the Shipping Board, the Shipping Board Bureau and the Maritime Commission, the successive administrators of the Act, ever believed that the statute gave the power here assumed by the appellee Commission. It is respectfully submitted that that construction is the reasonable one and that the decree of the Lower Court should be reversed with instructions to grant the prayer of appellant's bill.

Respectfully submitted,

W. REGINALD JONES,
Port Attorney,
Attorney for Appellant.

December 4, 1943.

SUPREME COURT

OF THE

UNITED STATES

OCTOBER TERM, 1943

No. 22

CITY OF OAKLAND, acting by and through its Board of Port Commissioners,

Appellant.

vs.

THE UNITED STATES OF AMERICA AND UNITED STATES MARITIME COMMISSION,

Appellees.

PETITION FOR REHEARING.

W. REGINALD JONES,
Port Attorney,

Grove Street Pier
Oakland, California

Counsel for Appellant.

SUPREME COURT

OF THE

UNITED STATES

OCTOBER TERM, 1943

No. 22

CITY OF OAKLAND, acting by and through its Board of Port Commissioners,

Appellant,

vs.

THE UNITED STATES OF AMERICA AND UNITED STATES MARITIME COMMISSION,

Appellees.

PETITION FOR REHEARING.

To the Honorable Chief Justice and to the Honorable Justices of the Supreme Court of the United States:

The Appellant City of Oakland respectfully requests a rehearing of its appeal and, in this connection, respectfully represents:

Particular reference is made to the point that the finding of discrimination in this cause rests upon a con-

clusion that users of other services of Appellant suffer a burden because Appellant's free time rules and wharf demurrage rates are not sufficiently compensatory; this conclusion in turn is based on the definition of what is compensatory; and we find that as used by the Commission and approved by the majority opinion, it is a rate which includes a full share of all fixed overhead, space costs and profit.

Cost most assuredly does not include profit.

But Appellant advanced the argument, which it believes to be sound, that users of other services cannot be said to be subjected to a burden if the wharf demurrage rates meet the out-of-pocket expenses incurred in rendering them. Appellant feels this point is the crux of its case on the merits and the Court apparently has overlooked it, for no mention of it is made in the opinion.

The treatment of the subject is reserved to a later part of this petition, because of a purpose to make certain preliminary observations.

The majority opinion falls into the logical error of applying to an ordinary statute a concept customarily reserved to the Constitution—that of elasticity of application, of adaptation to changing conditions. We may grant that the power to regulate commerce, though originally confined to sailing ships and stagecoaches, comprehends all those instrumentalities of its furtherance that have been developed since—the steamship, the railroad, the

motor carrier, the telephone, telegraph and radio, and the airplane.

But that does not mean that an act of Congress designed to regulate stagecoaches would apply to a railroad, particularly where violation of the statute was made a crime.

A fundamental law, drawn as is our Constitution, laying down a broad framework of policy and subject matter, is conceived to embrace the entire field to which it is directed. Circumstances and facts existing at the time of its adoption are of no great assistance in ascertaining its present scope.

But where the reaches of a statute are in doubt, it is the intention of the legislature, as it existed at the time of the enactment, that is to be sought. That intention is fixed, and does not vary with changing conditions. It does not extend to new factors arising subsequently, nor to things which might be in contemplation of a Congress using similar language at the present time.

In other words "person" might be much more inclusive in a 1944 statute than it would have been in 1916. Similarly, "discrimination" might be given a more extensive meaning in the later enactment, and the weapons Congress might provide to combat the discrimination might be more effective in the one case than in the other.

The result is that in determining what Congress

meant in 1916 should not be measured by ideas of propriety of 1944.

This is not to frustrate regulation where it is advisable. It is not to freeze society in its 1916 status. The remedy lies with Congress, if evils exist, and not to a well-meaning usurpation by the administrative branch. Congress is sitting almost continuously.

Appellant showed in its opening brief that attempts were made in the late thirties to subject wharfingers to the jurisdiction of the Commission, and Congress balked such efforts. It appeared that for the first 24 years of its existence, the Shipping Act, 1916, was never construed by its successive administrators to endow them with any power like the one now claimed. They did not believe they had jurisdiction over the public ports; they denied the right to fix minimum rates until the Act of 1938, even as to water carriers (that statute did not apply to wharfingers). Until the enactment of the Transportation Act of 1920, containing clauses similar to the 1938 enactment, no such power was enjoyed by the Interstate Commerce Commission.

The majority opinion brushes these and other weighty considerations aside by calling them "useless generalities about statutory construction". They may not be conclusive, but they are far from "useless". A whole body of law has been built up to furnish guides in determining the meaning of statutes. Legislators rely on them; courts apply them; counsellors use them.

Instead of these objective tests, discernible to all who would learn the reason for the decision, the majority opinion espouses one that is entirely subjective, hidden in the mind of the author.

It does say that the manager of the bill in the House, during the process of the enactment of the Shipping Act, 1916, left no doubt that the legislation was designed to prevent discrimination no less by public than by private owners. That is nothing more than the common law and nation-old constitutional law. A public agency operating a public utility cannot discriminate between users of its service, nor can it discriminate against interstate commerce in favor of local trade.

The language of the manager relied on is equivocal, but there can be no doubt he denied the intention to create the power the majority opinion has acknowledged. Mr. Humiphrey of Washington, directing his question to the public wharves of Los Angeles, San Francisco and Seattle, asked:

> ". . . Now, is it proposed to take the control and regulation of these wharves away from the city authorities and place it under the control of this board? . . . What I was asking was whether it was the intention of this provision in the bill to take away the control of these municipal wharves from the cities which constructed them?"

Mr. Alexander, the manager, replied:

> "*Not at all*; only to prevent unjust discrimina-

> tion between shippers. If they do exercise such discrimination, there is no reason why they should not be amenable to the law as well as a private person." (53 Cong. Rec. 8276, emphasis supplied.)

There is no discrimination in fact shown on the record.

With regard to free time, the only finding of the Commission was a possible lack of uniformity in the *extension* of the free time period, in the discretion of port officials, in those cases where a vessel was delayed. This has no bearing on the free time period itself, and there is not a word in the record to show that it has not been applied uniformly, nor even that the power to extend the time has been exercised unequally.

But to give itself jurisdiction, the Commission made this finding of discrimination as to one rule concerning free time and, without other evidence, struck down the whole free time structure. The majority opinion approves this assumption of power.

With regard to wharf demurrage, the opinion announces a revolutionary principle of rate making, and it sets no limit on its application.

In effect it says that if a given rate fails to pay its full share of all fixed costs, all specific expenses, and contribution to profit, it is discriminatory. This means that any specific commodity rate in the tariff of any common carrier is subject to attack if it is not as high as its fellows.

It ignores all factors of rate making except cost. It disregards competition between various kinds of carriers. It precludes the possibility of promotional rates, notwithstanding the rate under attack meets all out-of-pocket costs incurred in rendering the service.

This is the first time such a rate has been held unlawful, although the opinion does not discuss the out-of-pocket theory.

Appellant's wharf demurrage rates are a typical example of the application of and justification for the out-of-pocket theory.

It is obvious a wharfinger would not encourage storage at low rates if he had other use for that portion of his facility.

He thus has unused space and, of course, gets no revenue from it. He establishes a low storage rate to put the space to some productive use, and the rate is at such level that the revenue it produces gives him something more than the expense he has gone to to handle the business. There is some contribution to overhead and other fixed costs, and to that extent the burden of the users of other services is lessened.

It is the exact opposite of the effect given the rates by the Commission and the majority opinion. There is no burden cast on users of other services if the rates meet the out-of-pocket costs plus something more.

This point was urged throughout the proceeding before the Commission, in the Court below, and on this appeal. Without a finding of such burden, the charge of discrimination falls, and with it, the jurisdiction of the Commission.

Appellant feels that if the Court will consider this point, the order of the Commission cannot be upheld, and that the judgment of the lower Court will be reversed.

The proceeding is one of extreme anxiety and importance to Appellant and all the ports of the country, and the conclusion arrived at in the majority opinion should not be arrived at without a full consideration of all material points involved.

Dated at Oakland, California, January 20, 1944.

Respectfully submitted,

W. REGINALD JONES,
Port Attorney,
Counsel for Appellant
CITY OF OAKLAND.

CERTIFICATE OF COUNSEL.

I hereby certify that the foregoing Petition for Rehearing is presented in good faith and not for delay.

W. Reginald Jones.

SUPREME COURT OF THE UNITED STATES.

Nos. 20 and 22.—October Term, 1943.

State of California and Board of State Harbor Commissioners for San Francisco Harbor, Appellants,
20 *vs.*
The United States of America, United States Maritime Commission, Encinal Terminals, et al.

City of Oakland, a Municipal Corporation acting by and through its Board of Port Commissioners, Appellant,
22 *vs.*
The United States of America, United States Maritime Commission, Encinal Terminals, et al.

Appeals from the District Court of the United States for the Northern District of California.

[January 3, 1944.]

Mr. Justice Frankfurter delivered the opinion of the Court.

The United States Maritime Commission found that terminals along the commercial waterfront in the Port of San Francisco were engaged in preferential and unreasonable practices in that they allowed excessive free time and made non-compensatory charges for their services, all in violation of §§ 16 and 17 of the Shipping Act of 1916, as amended.[1] Accordingly, the Commis-

[1] Section 16, so far as here relevant, provides: "That it shall be unlawful for any common carrier by water, or other person subject to this Act, either alone or in conjunction with any other person, directly or indirectly—First. To make or give any undue or unreasonable preference or advantage to any particular person, locality, or description of traffic in any respect whatsoever, or to subject any particular person, locality, or description of traffic to any undue or unreasonable prejudice or disadvantage in any respect whatsoever." c. 451, 39 Stat. 734, c. 581, 49 Stat. 1518, 46 U. S. C. § 815.

The pertinent portion of § 17 reads: "Every such carrier and every other person subject to this Act shall establish, observe, and enforce just and reasonable regulations and practices relating to or connected with the receiving, handling, storing, or delivering of property. Whenever the commission finds

sion ordered the cessation of these proscribed practices, and in order to assure lawful practices it prescribed schedules of maximum free time periods and of minimum charges to reflect the actual cost of services. 2 U. S. M. C. 588. Two of the terminal operators in the San Francisco Bay area were the State of California and the City of Oakland. They brought these proceedings to set aside the Commission's order in so far as it applied to them. A district court of three judges denied relief. 46 F. Supp. 474. The case is here on direct appeal under § 31 of the Shipping Act (c. 451, 39 Stat. 738, Ex. Ord. No. 6166, c. 858, 49 Stat. 1987, 2016, 46 U. S. C. § 830, in connection with the Urgent Deficiencies Act of 1913 (c. 32, 38 Stat. 220, 28 U. S. C. §§ 47 and 47a) and the Judiciary Act of 1925 (c. 229, 43 Stat. 938, 28 U. S. C. § 345(4)). California and Oakland denied the power of the Commission to issue the kind of order that it did, and in any event they urged that the authority under which the Commission acted does not or, if it does, cannot constitutionally cover their operations.

The legal issues depend for their solution upon an understanding of the situation to which the Commission addressed itself—the circumstances as the Commission found them and the appropriate way of dealing with them. What follows is a rapid summary of a voluminous record.

Through its Board of State Harbor Commissioners, California provides facilities for the handling of freight and passengers on the San Francisco waterfront, under a statute which prohibits the Board from making charges beyond the cost of furnishing such facilities and administering them. California Harbors and Navigation Code §§ 3080, 3084. Pier and office space is assigned by the Board to various steamship lines, and charges fixed by the Board are collected by these assignees for the Board. Except at two piers, the assignees handle the cargo, but the Board employs a staff of men to check all cargo and vessel movements and collect its charges. Oakland, through its Board of Port Commissioners, operates piers and terminals which, like those of California, are designed to accomodate vessels in coastwise, intercoastal, offshore, and foreign trade. Whether the facilities are

that any such regulation or practice is unjust or unreasonable it may determine, prescribe, and order enforced a just and reasonable regulation or practice." c. 451, 39 Stat. 734, Ex. Ord. No. 6166, c. 858, 49 Stat. 1987, 2016, 46 U. S. C. § 816.

operated by the City directly or leased to another, the City prescribes and collects the charges.

In thus providing facilities for water-borne traffic, Oakland and California have for many years competed with privately-owned terminals in San Francisco Bay. Cut-throat competition ensued, with the inevitable chaos following abnormally low rates. In an attempt to remedy the situation, the California Railroad Commission investigated the operations of terminals in San Francisco Bay, and, more particularly pertinent for present purposes, the prevalent discrimination among users of the terminal services. The conclusions from this inquiry were embodied in an order issued by the Railroad Commission in 1936. 40 Calif. R. R. Comm. Decisions 107. But publicly-owned terminals, and therefore those of California and Oakland, are not subject to the jurisdiction of the Railroad Commission. Since these public bodies operated the major portion of the dock facilities in the area, the Railroad Commission naturally found it impossible to order adjustments in the practices of the private terminals unless the competing public bodies agreed to make similar adjustments. The order of the Commission was so conditioned. California and Oakland acceded to the recommendations in some respects but failed to do so as to practices now to be described.

When cargo is brought to a wharf for shipment or removed to a wharf from a ship, it is the custom to allow a period of "free time" during which the cargo may rest on the wharf without charge. The length of the free time is fixed, broadly speaking, by determining the period reasonably necessary for the shipper to assemble or to remove his goods and for the ship to load or to discharge. When cargo is left on the wharf beyond the free time period, a charge called "wharf demurrage or storage" is assessed. The Railroad Commission recommended free time periods shorter than was the practice of California and Oakland, and wharf demurrage charges greater in many instances than those collected by them. These recommendations California and Oakland rejected. This impasse, due to the immunity of California and Oakland from state regulation, was followed by the proceedings before the United States Maritime Commission which resulted in the order now before us. Extended hearings were held before the Commission's examiner, at which the principal wit-

nesses were officials of the Board and Oakland and an expert of the Railroad Commission. After full submission of the controversy, the examiner made his report and findings. On exceptions to some of his findings, the issues were again thoroughly canvassed before the Commission, and on September 11, 1941, it made its order.

The Commission found that there was a marked lack of uniformity in the free time periods allowed by the various terminals, and that to the extent that appellants' free time allowances were greater than those recommended by the Railroad Commission they were unreasonable and led to discrimination against those persons who did not and could not use extended free time. After consideration of the cost studies submitted by its experts as well as of the data introduced by appellants, the Commission further found that appellants' demurrage charges were less than the cost of the services and the carrying charges of the facilities which furnished them. It concluded that unless those who took advantage of wharf storage supplied revenue sufficient to meet the cost of the service, the burden would be shifted to those who paid appellants for other terminal services, such as docking of vessels, loading and unloading, and transportation privileges over and through the terminals. Accordingly, the Commission ordered appellants to cease and desist from allowing greater periods of free time than those found reasonable by the Railroad Commission, and to abstain from collecting wharf demurrage and storage rates less than those prescribed by the California authority for private terminals.[2]

Having found violations of §§ 16 and 17, the Commission was charged by law with the duty of devising appropriate means for their correction. It could have issued an order generally prohibiting further preferential and unreasonable practices, leaving the parties to translate such a generality into concreteness and to devise their own remedies. The Commission chose to do otherwise. It can hardly be suggested that the protection of the na-

[2] The City of Oakland asks this Court to determine whether the Maritime Commission properly found that § 15 of the Shipping Act required Oakland to submit certain lease agreements for the Commission's approval. c. 451, 39 Stat. 733, Ex. Ord. No. 6166, c. 858, 49 Stat. 1987, 2016, 46 U. S. C. § 814. The Commission's order does not appear to require such filing. If this be an inadvertent or clerical omission, since Oakland's objection is founded on its basic contention that it is not subject to the Shipping Act, we need not further consider this subsidiary question.

tional interest in interstate and foreign commerce or even the convenience of the parties would, as a matter of sensible and economic administration, limit the Commission to such negative means of dealing with the evils revealed on this record in one of our greatest ports. Cf. *Phelps Dodge Corp.* v. *Labor Board*, 313 U. S. 177, 194. Explicit formulation of duties owed by a business subject to legal regulation is desirable if indeed not necessary. Only thus can it avoid the hazards of uncertainty whether its attempted compliance with an undefined requirement of law is in fact compliance. Neither industry nor the community which it serves is benefitted by the explosion of intermittent lawsuits for determining the relative rights of conflicting interests. What more natural for the Commission, having found disobedience of the law against discriminatory and unreasonable practices, than to define the outer bounds of practices that would not be unreasonable nor discriminatory.[3] And so the Commission fixed a schedule of maximum free time and another schedule for avoiding discrimination through non-compensatory charges. It acted on authoritative information and fully canvassed testimony in fixing the minimum charges that would reflect cost. It was proper to choose the cost standard, because just as unreasonably long free time tends to be parasitic on rates for other services, non-compensatory demurrage results in the same mischief. Cf. *B. & O. R. Co.* v. *United States*, 305 U. S. 507, 524.

Appellants' objection is that while §§ 17 and 18 specifically give the Commission rate-making power over common carriers by water,[4] no such power is given over those who, like California and Oakland, are not common carriers by water. We

[3] *Booth S. S. Co.* v. *United States*, 29 F. Supp. 221, is an object lesson. In that case, the order of the Maritime Commission as to the charges to be imposed after free time was in general terms. Attempted compliance with that order led to conflict, and the Commission found it necessary to undertake new proceedings and to issue a new, more definite order.

[4] The following are the rate provisions in §§ 17 and 18. Section 17: "That no common carrier by water in foreign commerce shall demand, charge, or collect any rate, fare, or charge which is unjustly discriminatory between shippers or ports, or unjustly prejudicial to exporters of the United States as compared with their foreign competitors. Whenever the commission finds that any such rate, fare, or charge is demanded, charged, or collected it may alter the same to the extent necessary to correct such unjust discrimination or prejudice and make an order that the carrier shall discontinue demanding, charging, or collecting any such unjustly discriminatory or prejudicial rate, fare, or charge." Section 18: "That every common carrier by water in interstate com-

fully agree that no rate-making power such as the Commission has been given over water carriers is conferred over other persons subject to the Shipping Act. But the order of the Commission, though it pertains to demurrage charges, is not an exercise of conventional rate-making. By § 17 all those who are subject to the Act are under a duty to "establish, observe, and enforce just and reasonable regulations and practices relating to or connected with the receiving, handling, storing, or delivering of property." When the Commission finds a breach of this duty, the same section authorizes it to "determine, prescribe, and order enforced a just and reasonable regulation or practice." The withholding of rate-making power for services other than water carriage does not qualify the unlimited grant to the Commission of the power to stop effectively all unjust and unreasonable practices in receiving, handling, storing or delivering property. Finding a wrong which it is duty-bound to remedy, the Maritime Commission, as the expert body established by Congress for safeguarding this specialized aspect of the national interest, may, within the general framework of the Shipping Act, fashion the tools for so doing. Cf. *United States Nav. Co.* v. *Cunard S. S. Co.*, 284 U. S. 474, 487; *Warehouse Co.* v. *United States*, 283 U. S. 501, 513. The only way to correct the preferential and unreasonable results of non-compensatory charges was to require compensatory charges. All that the Commission did was to translate that requirement from a generality into dollars and cents. That the phrase "regulation or practice" extends to such discrimination as that which resulted from non-compensatory demurrage charges is amply demonstrated by the application of the concept "practice" in comparable situations under the Interstate Commerce Act. *Adams* v. *Mills*, 286 U. S. 397, 409; *B. & O. R. Co.* v. *United States*, 305 U. S. 507, 524.

We have disposed of the only serious question raised. The numerous other questions call for only summary treatment.

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merce shall establish, observe, and enforce just and reasonable rates, fares, charges, classifications, and tariffs, and just and reasonable regulations and practices relating thereto. . . . Whenever the Commission finds that any rate, fare, charge, classification, tariff, regulation, or practice, demanded, charged, collected, or observed by such carrier is unjust or unreasonable, it may determine, prescribe, and order enforced a just and reasonable maximum rate, fare, or charge, or a just and reasonable classification, tariff, regulation, or practice." c. 451, 39 Stat. 735, Ex. Ord. No. 6166, c. 858, 49 Stat. 1987, 2016, 46 U. S. C. §817.

Since Oakland and California are not common carriers by water they are subject to the authority of the Commission only if they come within the designation "other person subject to this Act" as defined in § 1 of the Shipping Act. c. 451, 39 Stat. 728, c. 152, 40 Stat. 900, 46 U. S. C. § 801. The phrase covers "any person not included in the term 'common carrier by water,' carrying on the business of forwarding or furnishing wharfage, dock, warehouse, or other terminal facilities in connection with a common carrier by water". And "person" "includes corporations, partnerships, and associations . . . ." We need not waste time on useless generalities about statutory construction in order to conclude that entities other than technical corporations, partnerships and associations are "included" among the "persons" to whom the Shipping Act applies if its plain purposes preclude their exclusion. The crucial question is whether the statute, read in the light of the circumstances that gave rise to its enactment and for which it was designed, applies also to public owners of wharves and piers. California and Oakland furnished precisely the facilities subject to regulation under the Act, and with so large a portion of the nation's dock facilities, as Congress knew (53 Cong. Rec. 8276), owned or controlled by public instrumentalities, it would have defeated the very purpose for which Congress framed the scheme for regulating waterfront terminals to exempt those operated by governmental agencies. We need not rest on inference to avoid a construction that would have such dislocating consequences. The manager of the bill which became the Shipping Act of 1916, speaking on the floor of the House, left no doubt that the legislation was designed to prevent discrimination no less by public than by private owners. 53 Cong. Rec. 8276. And whatever may be the limitations implied by the phrase "in connection with a common carrier by water" which modifies the grant of jurisdiction over those furnishing "wharfage, dock, warehouse, or other terminal facilities", there can be no doubt that wharf storage facilities provided at shipside for cargo which has been unloaded from water carriers are subject to regulation by the Commission. Finally, it is too late in the day to question the power of Congress under the Commerce Clause to regulate such an essential part of interstate and foreign trade as the activities and instrumentalities which were here authorized to be regulated by the Commission, whether they be the

activities and instrumentalities of private persons or of public agencies. *United States v. California*, 297 U. S. 175, 184-5.

Due consideration has been given to other objections, referring to the sufficiency of the evidence before the Commission, the adequacy of its findings, and its competence, but they require no discussion.

Judgment affirmed.

SUPREME COURT OF THE UNITED STATES.

Nos. 20 and 22.—October Term, 1943.

State of California and Board of State Harbor Commissioners for San Francisco Harbor, Appellants,
20 vs.
The United States of America, United States Maritime Commission, Encinal Terminals, et al.

City of Oakland, a municipal corporation, acting by and through its Board of Port Commissioners, Appellant,
22 vs.
The United States of America, United States Maritime Commission, Encinal Terminals, et al.

Appeals from the United States District Court for Northern California.

[January 3, 1944.]

Mr. Justice Roberts.

I dissent. I pass the contentions of the appellants respecting the power of Congress to regulate the State's activities under consideration, the scope of the term "person" as used in the Shipping Act, and the alleged absence of any grant of power to the Commission to fix minimum rates for water carriers or others. This for the reason that, in my opinion, Congress has withheld from the Commission authority to fix or regulate the rates or charges of those furnishing wharfage facilities.

The Shipping Act of 1916, in all parts here relevant, has remained as it was originally adopted, though amended in other respects by later legislation. In § 1,[1] after defining carriers by water, which are the primary subject of its regulatory provisions, the Act adds:

"The term 'other person subject to this Act' means any person not included in the term 'common carrier by water,' carrying on

[1] 46 U. S. C. 801.

the business of forwarding or furnishing wharfage, dock, warehouse, or other terminal facilities in connection with a common carrier by water."

Section 16[2] provides:

"That it shall be unlawful *for any common carrier by water, or other person subject to this Act*, either alone or in conjunction with any other person, directly or indirectly—

First. To make or give any undue or unreasonable preference or advantage to any particular person, locality, or description of traffic in any respect whatsoever, or to subject any particular person, locality, or description of traffic to any undue or unreasonable prejudice or disadvantage in any respect whatsoever." [Italics supplied.]

Section 17[3] in pertinent part, provides:

"*No common carrier by water in foreign commerce* shall demand, charge, or collect *any rate, fare, or charge which is unjustly discriminatory between shippers or ports*, or unjustly prejudicial to exporters of the United States as compared with their foreign competitors. Whenever the commission finds that any such rate, fare, or charge is demanded, charged, or collected it may alter the same to the extent necessary to correct such unjust discrimination or prejudice and make an order that the carrier shall discontinue demanding, charging, or collecting any such unjustly discriminatory or prejudicial *rate, fare, or charge*." [Italics supplied.]

"*Every such carrier and every other person subject to this Act* shall establish, observe, and enforce just and reasonable *regulations and practices* relating to or connected with the receiving, handling, storing, or delivering of property. Whenever the commission finds that any such regulation or practice is unjust or unreasonable it may determine, prescribe, and order enforced a just and reasonable regulation or practice." [Italics supplied.]

Section 18,[4] so far as relevant, is:

"*Every common carrier by water in interstate commerce* shall establish, observe, and enforce just and reasonable *rates, fares, charges, classifications, and tariffs*, and *just and reasonable regulations and practices relating thereto* and to the issuance, form, and substance of tickets, receipts, and bills of lading, the manner and method of presenting, marking, packing, and delivering property for transportation, the carrying of personal, sample, and excess baggage, the facilities for transportation, and all other mat-

[2] 46 U. S. C. 815.
[3] 46 U. S. C. 816.
[4] 46 U. S. C. 817.

ters relating to or connected with the receiving, handling, transporting, storing, or delivering of property." [Italics supplied.]

The Commission concedes, as it must, that whereas the Act definitely deals with the rates of water carriers, and places those rates under the regulatory jurisdiction of the Commission, it contains no such specific mandate to the Commission concerning the rates or charges of wharfingers. It must equally be conceded that the order of the Commission under review does establish minimum rates and charges for services rendered by those maintaining and operating wharves used by water carriers. In the absence of specific authority in this behalf, the Commission turned to that portion of § 16 which prohibits not only water carriers but other persons subject to the Act from granting preferences or practicing discrimination, and that portion of § 17 which comprehends both water carriers and other persons subject to the Act and enjoins just and reasonable regulations and practices respecting receiving, handling, storage or delivery of property.

The over simplified argument in support of this position is that a rate or charge is, in a broad sense, a regulation or practice. The difficulty with the argument is that, in the Interstate Commerce Act, and elsewhere, Congress has always sharply distinguished, as it did in the present Act, between rates and charges on the one hand, and regulations and practices on the other. The legislative history of the Shipping Act indicates that Congress well understood that states and municipalities, in order to encourage the flow of commerce through their ports, had established public wharves and that Congress intended that, as respects such public facilities, preferences and discriminations should not be permitted. But there is nothing in the legislative history to indicate that, in the teeth of the plain words of the statute as enacted, Congress had in mind conferring power to regulate the rates and charges for such publicly owned facilities; much less that if a state or its agency deemed it advisable and in the public interest to operate such facilities at low rates, to encourage the flow of commerce through its ports, the Commission could put a floor under its rates and compel it in effect to aid competing private enterprise.

Little need be, or can be, added to the clearly expressed words of the statute. It speaks for itself, and I think the court ought not to permit the use of a prohibition against practices to be availed of to write additional provisions into the section dealing with rates and charges.

The attempt to bolster this process, on the part of the Commission, by reference to the decisions of this court seems to me futile. The Commission and the Government rely principally upon *Baltimore and Ohio Railroad Co.* v. *United States*, 305 U. S. 507. That case obviously not only fails to support the order but seems to me to be an authority against it. The case arose under the Interstate Commerce Act. It dealt with a practice of carriers which was to maintain warehouses in respect of which low cost storage was afforded to persons who would ship over the carrier's lines. In essence the practice of warehousing at such low rates operated as a rebate or discrimination in the carrier's transportation rate favoring any shipper who would use the carrier's lines and disfavoring those who would not, or could not, do so. Here we are not concerned with water carriers' rates, fares or charges. The Commission's order is directed at services rendered by privately and publicly owned wharves, applicable to all seeking to avail themselves of the services which are proffered to all alike. If any discrimination by the appellants as between shippers were pointed out it may well be that the Commission might order the discontinuance of such discrimination. That is not this case. The Commission purports to order the discontinuance of a discrimination but, in reality, orders a rise in the level of rates applicable without discrimination to all those who can and do use the proffered services. Its order is a thinly veiled attempt to cloak a rate order under the guise of a regulation. I think it plain that Congress granted no such power.

I would reverse the judgment.

Mr. Justice BLACK, Mr. Justice DOUGLAS, and Mr. Justice MURPHY join in this dissent.